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NOMINATION

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

JOHN R. VAN DE WATER, OF CALIFORNIA, TO BE CHAIRMAN, NATIONAL LABOR RELATIONS BOARD

SEPTEMBER 30, 1981

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NOMINATION

WEDNESDAY, SEPTEMBER 30, 1981

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 2:25 p.m., in room 4232, Dirksen Senate Office Building, Senator Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Hatch, Denton, Nickles, East, Kennedy, and Williams.

Also present: Senator Hayakawa.

OPENING STATEMENT OF SENATOR HATCH

The CHAIRMAN. We are happy to welcome all of you here today.

We are here today to take testimony on the President's nomination of Mr. John R. Van de Water of California to be a member of the Nation's premier forum for the airing of disputes involving labor law and the activities of union and management.

The National Labor Relations Board was established in 1935 with the passage of the National Labor Relations Act, commonly referred to as the Wagner Act. The act was an attempt to balance individual rights and economic freedoms with the controls that Congress felt were necessary to reduce the rampant labor conflicts that existed then—conflicts which were hindering the economic growth of the United States at a time when growth was absolutely essential.

The Taft-Hartley Act followed in 1947, in an effort to remedy some of the deficiencies that had been found in the balancing mechanism. Taft-Hartley, among other things, increased the size of the National Labor Relations Board from three to five members.

Congress intended the NLRB to be "one of those agencies presumably equipped or informed by experiences to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect."

The Board therefore represents something other than, and different from, a body whose function is to interpret the law. Rather, the Board operates as a buffer between labor and management, utilizing its expertise in the field of labor-management relations to facilitate accord between the parties.

A firm grasp of the law is imperative, but the power to state the law and interpret the law is reserved to Congress and the courts, respectively, by our Constitution.

The job of the NLRB is to delineate the practical requisites of the law, to enable the parties—labor and management—to negotiate

and satisfy their own needs, while at the same time respecting and furthering the needs of our society as a whole.

The Board is a much needed relief valve, installed in the Federal machinery to help parties resolve disputes, avoid protracted disputes that do damage to the fabric of our society and economy, and to avoid industrial violence.

Mr. Van de Water will acquaint us more fully with his qualifications during his testimony. Over the past 40 years he has worked closely with both labor and management—sometimes with both the labor and management groups involved in a particular situation—in resolving disputes.

He has extensive experience in instructing labor and management in the practical requisites of the Wagner Act and the Taft-Hartley amendments and has shown by this experience the ability to see clearly from both viewpoints and make fair interpretations of the law. Those qualifications figured highly in President Reagan's decision to nominate him to this post.

Mr. Van de Water, let me welcome you to this committee. This is a full committee responsibility. The National Labor Relations Board, as we all know, plays a relevant and very important role in the lives of millions of Americans who belong to organized labor unions and millions more who labor but do not belong to organized bargaining units.

I am sure that my colleagues will want to ask you several questions, and they will of course have every chance to do so.

We are happy to have you here, and we have been very pleased to get better acquainted with you during these last intervening months.

I have to apologize; I have a major conflict. The Judiciary Committee is meeting downstairs, and it is necessary for me to be there for part of the time—at least the next 15 or 20 minutes. That is why we have been delayed.

Senator Thurmond, who is the President pro tempore, just plainly would not let me come up and conduct my own committee meeting because he wanted me for a quorum.

So if you will forgive us for that, we will proceed and call on Senator Kennedy for his opening remarks.

Senator KENNEDY. Thank you very much, Mr. Chairman.

The National Labor Relations Board has long been recognized as one of the most important and at the same time one of the most controversial of Federal regulatory agencies.

In the field of labor relations Congress has repeatedly recognized the need to strike a balance between the competing interests of management and labor in order to insure industrial peace and stability.

The NLRB was the instrument Congress chose in 1935 and again in 1947 to assure that this careful balance should be preserved and that the rights of employees would be fully protected.

Because of the Board's central role in establishing national labor policy, impartial administration of the act has always been a matter of paramount importance.

Board members must carry out their duties in a thoroughly objective, fair, and impartial manner. They must also have the

trust and confidence of those who must rely on the Board to interpret the rights and obligations.

This is not an easy task. The two sides are often deeply divided over the proper interpretation of the act. This is particularly so in periods like the present one when relations between labor and management are severely strained.

The history of the National Labor Relations Act has been marked by periods when one side or the other, seeing an opportunity for temporary advantage, has sought to place advocates of its particular point of view on the Board.

Because the issues which come before the Board have such broad implications for social and economic arrangements in our country, it is the responsibility of Congress to insure that this does not occur.

In my judgment, any nominee to the Labor Board must be committed to the basic principles of collective bargaining, should have demonstrated his or her commitment to those principles in private life, and must satisfy the members of this committee that he or she will administer the law with these matters foremost in their mind.

It is my hope that Mr. Van de Water can meet these exacting standards. I look forward to hearing from him as well as other witnesses who are appearing before us here this afternoon. I congratulate him on gaining the nomination for this particular responsibility and look forward to his testimony.

Senator DENTON [acting chairman]. Thank you, Senator Kennedy.

Senator Hatch has asked that I serve temporarily as chairman.

Senator Nickles from Oklahoma, do you have an opening statement?

Senator Nickles. Thank you, Mr. Chairman.

I would like to welcome Mr. Van de Water and also the Senator from California for bringing him before the committee today.

I think this nomination is very important to every employee and every employer in the country. I am satisfied that President Reagan has selected a capable, qualified, and experienced individual to become the chairman of the NLRB.

I am concerned with the recent activities and direction of the NLRB. The Board has become politicized and activist. Consequently, the courts are overturning an amazing percentage of Board rulings: 35 percent of all decisions appealed to the courts are not fully affirmed.

Federal courts are ultimately criticizing the Board for its flagrant disregard of judicial precedent. Despite these criticisms, the Board continues to overturn precedent after precedent.

At a time when we are striving for stable labor relations we must have a stable National Labor Relations Board to create sound public policy.

Mr. Van de Water has demonstrated genuine expertise in labor relations. I am particularly impressed with the major programs and dialog between labor and management that he has set up on several occasions on the west coast.

I am also impressed with the opening up of your classrooms for labor, management, and government, so your students can learn all sides and faces of both labor law and labor-management rela-

tions. This type of balanced thinking and approach is essential for the Chairman of the NLRB.

You have demonstrated this balance in your professional career, and with this factor I fully expect that the Board will once again deserve the respect of labor, management, and the courts.

Once again, Mr. Van de Water, I welcome you. I endorse your nomination and look forward to your prompt consideration and confirmation by this committee and also by the Senate.

Senator DENTON. Thank you, Senator Nickles. I would wish to give an opening statement and then go to the distinguished Senator from California, who will introduce the nominee.

It is an honor to attend today and express my strong support for the nomination of John Van de Water to become Chairman of the National Labor Relations Board.

The National Labor Relations Act, which is administered by the Board, is designed to give employees the right to choose or to refrain from choosing a union to be their collective-bargaining representative.

The act gives significant statutory powers to exclusive bargaining representatives. These powers restrict the actions of employers who are required by law to bargain with the union and those employees who would not otherwise voluntarily associate with their bargaining representatives.

As such, it is essential that the members of the National Labor Relations Board come to their positions with substantial real-world experience of how our labor laws actually impact on the American economy.

President Reagan has made some outstanding appointments so far in his administration. In my personal opinion, none of these past appointments will eventually prove to have been more inspired than the selection of John Van de Water to serve on the NLRB.

He has first-hand knowledge of how our labor laws affect small businessmen and individual employees, and I believe that he understands how the policies underlying Reaganomics apply to labor relations.

John Van de Water has served as a labor-management consultant for over 30 years. As a member of the California bar, Mr. Van de Water has represented many prestigious members of our economic community, including North American Aviation and Ford Motor Co.

Mr. Van de Water also has academic credentials of the highest level. He has served as the first director of the California bar's program for the continuing education of the legal profession, as an adjunct professor of industrial relations at the University of Southern California, and as director of executive education and professor of industrial relations at San Diego State University.

He has connections with Pepperdine University, and in that capacity I had the privilege of meeting him. Having met Mr. Van de Water and discussed mutual objectives at great length, I have derived tremendous personal respect for him.

His altruism and nobility of character are particularly fortuitous qualities for a man nominated to serve as Chairman of the NLRB.

As a management consultant Mr. Van de Water is well known for his positive approach to labor problems and for his ability to impartially explain both employer and union rights under the National Labor Relations Act.

In short, he will bring to the National Labor Relations Board real-world experience and sound judgment, for which he is well respected by both management and union representatives with whom he has worked.

I congratulate you, sir, on your nomination and look forward to working with you as Chairman of the NLRB.

Mr. VAN DE WATER. Thank you, Senator.

Senator DENTON. Now, the distinguished Senator from California, Senator Hayakawa.

STATEMENT OF HON. S. I. HAYAKAWA, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator HAYAKAWA. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, it is a special pleasure to be here today to speak in support of the nomination of Mr. John Van de Water as Chairman of the National Labor Relations Board. I am delighted to welcome my fellow California educator and to wish him well when he assumes this important post.

Members of the NLRB perform a very sensitive role in the area of labor relations. The Board is a quasi-judicial body created by Congress to administer, implement, and enforce the provisions of the National Labor Relations Act, and its authority extends to all firms or labor disputes that affect the commerce of our country. Its two principal functions are to prevent and remedy unfair labor practices by employers and labor or their agents and to conduct secret ballot elections.

Labor law and the enforcement and litigation of these laws seriously affect every working man and woman in this country. The decisions made by members of the NLRB are extremely important and can be crucial in the lives of millions of Americans.

Mr. Van de Water has a long and diversified background in labor relations as an educator, lawyer, industrial management representative, and member of the Labor Arbitration and Collective Bargaining Law Committee of the American Bar Association and the Labor Relations Committee of the U.S. Chamber of Commerce.

He is very well known in California education circles, having served as director of the executive program for UCLA's Graduate School of Management and a member of the faculty for 20 years; and, at the time of his nomination to the NLRB, as the director of executive education and professor of industrial relations and management at San Diego State University. He is the author of many articles and publications in the areas of management, labor law, and industrial production.

One of the witnesses who will appear today in support of Mr. Van de Water is Mr. Roy M. Brewer, who has been a member of organized labor for 54 years and who has known and worked with the nominee for more than 30 years in labor matters. He describes Mr. Van de Water as a prominent authority in the field of labor relations who is known for his fine sense of fairness and impartial manner.

Mr. Chairman, Mr. Van de Water—I am tempted to call him Professor Van de Water—promises to administer his duties with impartiality and with, as he says, "proper emphasis to the fundamental rights of employees." I believe he will fulfill this promise, and I sincerely hope that the members of the committee will report favorably on his nomination.

Thank you very much for providing me the opportunity to speak on his behalf.

Senator DENTON. Thank you, Senator Hayakawa.

I believe the distinguished Senator from Illinois, Senator Percy, will submit in writing a supporting statement.

Senator HAYAKAWA. Mr. Chairman, I have Senator Percy's statement before me, and he has asked me to read it, if you have the time.

Senator DENTON. Yes, sir.

Would you permit me to allow Senator East, who has just joined us, to answer whether he chooses to make an opening statement before that?

Senator HAYAKAWA. Yes, certainly.

Senator EAST. Thank you, Senator Denton.

I regret that I will not be able to spend a great deal of time here. I appreciate the opportunity just to make a comment or two.

I do have a written statement concerning Mr. Van de Water that I would appreciate being placed in the record, and I would simply like to go on record here as indicating my strong and unabiding support for him.

I think in terms of his record in representing both management and unions he has a very real and practical experience in this area. His great integrity is known. If you look at the whole record and the whole man, you find that he is eminently well qualified for this appointment.

I take pride in being associated with his nomination and with his confirmation, voting for him here and also at the later appropriate time.

I will not detain the committee any further in its work and exploration, but I did want to make clear my total and complete personal and public support for this very distinguished public servant.

Thank you, Mr. Chairman.

Senator DENTON. Thank you, Senator East.

[The prepared statement of Senator East follows:]

STATEMENT OF SENATOR EAST

Senator EAST. Mr. Chairman, my comments will be brief due to my belief that the outstanding record of our nominee is sufficient evidence by itself to guarantee his confirmation. However, I am pleased to voice my complete and unequivocal support for the nomination of John Van de Water to become the Chairman of the National Labor Relations Board.

The NLRB is the Government agency charged with regulating the collective bargaining activities for the majority of workers employed in our private sector. As I stated during the confirmation hearing of Board-member Robert Hunter, it is essential that NLRB members have real-world experience of the actual impact of our

labor laws, not only on unions and large employers with political clout, but also upon small businessmen and dissenting employees.

John Van de Water is uniquely qualified to bring this perspective to the NLRB. Mr. Van De Water has worked for both employer and union clients during his career and has been successful in representing both. Later today, we will hear charges that Mr. Van de Water is unfit for service simply because of his successful career as a management attorney. Such accusations deserve serious relection. However, I believe that Mr. Van de Water's personal integrity and proven record which is based upon cooperation, not confrontation, should completely eliminate any doubts over our nominee's ability to review cases impartially.

Mr. Chairman, John Van de Water is truly one of the President's most outstanding appointments to date. I deeply appreciate the personal sacrifices Mr. Van de Water has made to serve his country in this capacity and I pledge to do everything in my power to insure his confirmation.

Senator DENTON. I will now turn the chairmanship over to the capable hands of the distinguished Senator from Oklahoma, Senator Nickles.

Senator NICKLES [acting chairman]. Thank you, Senator Denton.

Mr. Van de Water, do you have some opening comments that you would like to make?

Mr. VAN DE WATER. I think there was a request from Senator Hayakawa.

Senator NICKLES. Do you wish to enter Senator Percy's statement in the record?

Senator HAYAKAWA. I have Senator Percy's statement. In the interests of time, would you like me to simply submit it for the record?

Senator NICKLES. That would be fine.

Senator HAYAKAWA. I would just simply say that Senator Percy endorses Mr. Van de Water's confirmation very, very strongly. They were classmates at the University of Chicago. They served on athletic teams together at least three times, and their friendship goes a long, long way.

Therefore, Senator Percy's comments come with a particular warmth. I would be grateful if I could submit this for the record.

Senator NICKLES. We would be happy to enter those remarks, without objection.

[The prepared statement of Senator Percy follows:]

STATEMENT OF SENATOR CHARLES H. PERCY
ON THE NOMINATION OF JOHN R. VAN de WATER
TO THE NATIONAL LABOR RELATIONS BOARD

Senate Committee on Labor
and Human Resources — September 30, 1981

Mr. Chairman, it is my privilege this afternoon to introduce to this Committee Mr. John Van de Water, President Reagan's nominee for a full term as a member of the National Labor Relations Board and the person who, if confirmed by the Senate will continue to serve as NLRB Chairman, as he has during his recent, interim appointment.

Although John Van de Water is not at present a resident of the State of Illinois, we nonetheless are proud to claim him as one of our own by virtue of his graduation in 1939 from my own alma mater, the University of Chicago, and in 1941 from its law school. John and I were at the University together in those days although I would point out that he did much better than I in his post-graduate education. He finished law school and I dropped out.

In the intervening years, he has combined a career in teaching with one in industrial relations. Since 1949, he has been President of Van de Water Associates, Inc., consultants to management. He created and served as the first Director of the California State Bar program for the Continuing Education of the Legal Profession. He has served as Director of the Executive Program for UCLA's Graduate School of Management, and has served as a member of that school's faculty for 20 years.

He also served as Adjunct Professor of Industrial Relations and Management at the Graduate School of Business Administration, University of Southern California. At the time of his nomination, he was establishing an Executive Education program for San Diego, California, while serving as Director of Executive Education and Professor of Industrial Relations and Management at San Diego University. He has taught labor law to both labor and management and has stressed the absolute necessity of obedience to this country's labor laws.

Mr. Chairman, a little over a year ago, I announced my opposition on the Senate floor to the pattern that former President Carter was establishing in his appointments to the National Labor Relations Board. I felt that the Board, in order to meet its statutory obligations to labor and management in this country, needed balance among its membership and, in particular, more appointees who had had experience in industrial relations outside of the federal government. I reaffirmed my long held belief that continuing respect for the NLRB, its decisions, and for our labor law in general depends on the perception of both business and labor that they can get a fair deal when their cases come before the Board. At that time, I expressed concern also over the decline in the rate of federal court affirmance of Board decisions during the previous few years. The 1-out-of-3 chance for a court reversal of a Board decision, which existed at the time, was a serious problem, not only because it created a greater workload for the courts and the Board itself, and increased costs to both labor and management, but also because it called into question the fundamental ability of the Board to make judgments that will stick and of its ability to interpret the law.

The nomination of John Van de Water, and of Board Member Bob Hunter, just recently confirmed by the Senate, represent what I consider to be a good faith effort by President Reagan to reverse the decline of the affirmance of Board decisions and bring more credibility to those decisions.

His honesty is absolute. I have always found him to be objective. His ability can be judged by his distinguished record as both a teacher and a doer in the field of industrial relations. In short, Mr. Chairman, I feel that we have here a candidate who, if confirmed, will bring balance, prudence, and the respect of labor and management to his service as Baord Chairman. To confirm that last point, Mr. Chairman, let me close with a quote from Communications Workers of America District 11 Vice President, William C. Demers of California, which appeared in a recent issue of CWA Pride:

> "I know only that my relationship with him has indicated to me that he is a gentleman of honesty and integrity. A man who believes in people. A compassionate man. A man who espuses the philosphy that 'It is not who is right but what is right.
>
> "I believe, based on my knowledge of Mr. Van de Water, that...he will endeavor to be evenhanded and to bring labor and management closer together."

Mr. Chairman, there is no better testimony than that.

This concludes my formal remarks.

Senator NICKLES. Did you win at the University of Chicago?

Mr. VAN DE WATER. We were on three Big 10 championship teams together in 3 years, sir.

Senator NICKLES. You did well.

Mr. VAN DE WATER. Thank you.

Senator NICKLES. Mr. Van de Water, do you have some opening comments you would like to make?

Mr. VAN DE WATER. Yes, sir.

Senator NICKLES. I would also like to note for the benefit of Senator Kennedy and myself that in addition to Mr. Van de Water we also have Mr. Donahue and Mr. Brewer. We are also in session today, and so if we might move fairly quickly, then we can get into our questions; I will move quickly on mine if the Senator will, so we will be able to wrap this up hopefully in the not too distant future.

STATEMENT OF JOHN R. VAN DE WATER, NOMINEE TO BE CHAIRMAN, NATIONAL LABOR RELATIONS BOARD

Mr. VAN DE WATER. Mr. Chairman and distinguished members of the committee, I wish at the outset to thank you for giving me the opportunity to appear before you.

I am deeply honored that the President of the United States has selected me to head the National Labor Relations Board.

The primary purpose of the National Labor Relations Act is to insure that employees have the right to self-organization and to bargain collectively through representatives of their own choosing or to refrain from these activities if they so choose.

In implementing this purpose, the Board engages in two major functions—the conduct of representation elections and the resolution of unfair labor practice charges.

I pledge to impartially administer the statute involving these two major functions with proper emphasis to the fundamental rights of employees.

As Chairman of the National Labor Relations Board, I intend, with the cooperation of the Board's officials and other employees, to work with both labor and management toward advancing mutual trust and respect, toward improving full and voluntary compliance with the National Labor Relations Act, and toward corrective action where needed.

I have been involved in extensive services under this legislation since the early 1940's.

My doctorate in law was received from the University of Chicago in 1941. Following that, I was employed for a time in labor relations by North American Aviation and the Ford Motor Co., where I worked constantly to improve mutual trust, respect, and confidence between the labor union and management while handling grievances and collective bargaining.

My educational services have included the fields of professional management, labor law, and union-management relations for graduate and undergraduate students, for public and private sector executives, and for labor union leaders, at a number of university campuses.

In this educational service I had international, regional, and local union leaders and their attorneys and company and Govern-

ment executives and their attorneys, lecture to my students and freely express their points of view and explain their positions.

Many of the labor union officials and their employer representatives in the Los Angeles area received their training in labor law and labor relations in my classes at UCLA.

I have also taught labor law and labor relations separately in labor union halls for union officials. I have taught these subjects separately in management facilities for company executives and separately in Government-selected facilities for Federal, State, county, and city administrators.

Outside of the university setting, I have been employed jointly by the Communications Workers of America and Pacific Telephone & Telegraph Co. to train their leadership in more effective communications.

I have been employed jointly by the American Federation of Teachers, the California Teachers Association, and board of education and school administration officials, to mediate and solve serious impasse and strike-threat situations.

I have been employed by the International Association of Machinists' major California locals to train their leaders in labor law and union-management relations.

In my earlier years as professor of industrial relations and labor law, I was selected by labor unions and companies to serve as an arbitrator, both directly and through the Federal Mediation and Conciliation Service and the American Arbitration Association.

I created and served as the first director of the continuing education of the bar for the University of California and for the State Bar of California, of which I have been a member for more than 30 years. This was the first such program in the Nation, and it has now become duplicated in almost every American State.

I have served as director of the executive program of the Graduate School of Management at UCLA.

I have served as adjunct professor of industrial relations and management at the University of Southern California.

Most recently, and until my resignation to accept the President's recess appointment, I have served as a professor of industrial relations and management and as director of executive education for San Diego State University so that I could duplicate my UCLA work for California's second largest city.

In recent years I have conducted broad studies to evaluate and recommend improvements in management for many individual organizations. Outside of university settings, my major services as a management consultant have been related to the improvement of professional management in each of its major areas, including labor relations training and collective bargaining services as a part of this work. I have always maintained amicable and constructive relationships with organized labor while engaged in these services.

It has always been my philosophy in practice, in legal advice, and as an educator, that both labor unions and management should obey both the letter and spirit of the laws set down by our city, county, State, and Federal governments.

I have been awarded the status of honorary life membership by the Personnel and Industrial Relations Association of Los Angeles and the highest ranking of diplomat status in both labor relations

and training and development by the Nation's Personnel Accreditation Institute.

If the Senate sees fit to confirm me as a member of the National Labor Relations Board, it will be my intent to continue and improve the Board's work in handling its caseload in the representation and unfair labor practice areas and to see that congressional intent is carried out by management, labor unions, and employees under the National Labor Relations Act, as amended.

Thank you again for the opportunity to make this presentation, Mr. Chairman.

[The biographical sketch of Mr. Van de Water follows:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: VAN DE WATER (LAST) JOHN (FIRST) RANDOLPH (OTHER)

Position to which nominated: CHAIRMAN, NATIONAL LABOR RELATIONS BOARD Date of nomination:

Date of birth: 26 (DAY) MARCH (MONTH) 1917 (YEAR) Place of birth: LONG BEACH, CALIFORNIA, U.S.A.

Marital status: MARRIED Full name of spouse: INA HELEN MATTSON VAN DE WATER

Name and ages of children: ELEANOR VAN DE WATER (39) ELIZABETH VAN DE WATER (32) DAVID J VAN DE WATER (27)
JOHN R VAN DE WATER, JR (38) JEANNE V ANDERS (30)
(DR) ANNE P VAN DE WATER (36) CHARLES F VAN DE WATER (28)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
UNIVERSITY OF CHICAGO	1935-1941	A.B. J.D.	1939 1941
LONG BEACH POLYTECHNIC HIGH SCHOOL, CALIF.	1932-1935	DIPLOMA	1935
WASHINGTON JUNIOR HIGH SCHOOL, LONG BEACH, CALIF.	1929-1932	DIPLOMA	1932

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

STUDENT HONOR SCHOLARSHIP, UNIVERSITY OF CHICAGO; JUNIOR AND SENIOR CLASS HONOR SOCIETY PRESIDENTS; UNIVERSITY OF CHICAGO; STUDENT HEAD MARSHAL, UNIVERSITY OF CHICAGO; BETA GAMMA SIGMA, BUSINESS SCHOOL HONOR SCHOLARSHIP SOCIETY; ALPHA KAPPA PSI, BUSINESS SCHOOL PROFESSIONAL FRATERNITY; PHI DELTA PHI, LEGAL SOCIETY; HONORARY LIFE MEMBER, PERSONNEL AND INDUSTRIAL RELATIONS ASSOCIATION OF LOS ANGELES; FIRST PRIZE AWARD FOR MANAGEMENT RESEARCH, AMERICAN SOCIETY FOR TRAINING AND DEVELOPMENT; LABOR-ISMS; COMMENDATION BY MEMBERS OF THE HOUSE OF REPRESENTATIVES FOR "MOST USEFUL TESTIMONY IN THE NATION IN PREPARATION OF THE LABOR REFORM LAW OF 1959"; ACCREDITED PERSONNEL DIPLOMATE, TRAINING AND DEVELOPMENT.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
STATE BAR OF CALIFORNIA		1946 - CURRENT
AMERICAN BAR ASSOCIATION	MEMBER, COMMITTEE ON LABOR RELATIONS	1962 - 1966
PERSONNEL AND INDUSTRIAL RELATIONS ASSN OF LOS ANGELES	HONORARY LIFE MEMBER	1946 - CURRENT
PERSONNEL MANAGEMENT ASSOCIATION, SAN DIEGO, CALIF.		1980 - CURRENT
AMERICAN COUNCIL ON EDUCATION		1960 - CURRENT
PERSONNEL ACCREDITATION INSTITUTE	FOUNDING MEMBER, BOARD OF DIRECTORS	1974 - CURRENT
INDUSTRIAL RELATIONS RESEARCH ASSOCIATION		1950 - 1954
AMERICAN MANAGEMENT ASSOCIATION AND THE PERSONNEL ASSOCIATION, INC.		1965 - 1975
CHAMBER OF COMMERCE OF THE UNITED STATES	MEMBER, LABOR LAW COMMITTEE; CHAIRMAN, PUBLIC EMPLOYEE RELATIONS SUBCOMMITTEE	1965 - 1975
FEDERAL MED. MEDIATION & CONCILIATION SERVICE AND AMERICAN ARBITRATION ASSOCIATION	ARBITRATOR	1947 - 1954

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

PRESIDENT, VAN DE WATER ASSOCIATES, INC., LOS ANGELES, CAL., 1949-CURRENT

LAW PRACTICE, LOS ANGELES, CA., 1949 - CURRENT

DIRECTOR OF EXECUTIVE EDUCATION AND PROFESSOR OF INDUSTRIAL RELATIONS AND MANAGEMENT, SAN DIEGO STATE UNIVERSITY, 1980-CURRENT

ADJUNCT PROFESSOR OF INDUSTRIAL RELATIONS AND MANAGEMENT, UNIVERSITY OF SOUTHERN CALIFORNIA, 9/67 - 9/69

VISITING FACULTY LEVELS IN INDUSTRIAL RELATIONS LAW AND MANAGEMENT, CREATOR AND FIRST DIRECTOR OF CONTINUING EDUCATION FOR THE STATE BAR OF CALIFORNIA AND DIRECTOR OF EXECUTIVE PROGRAMS AND CONFERENCES, UNIVERSITY OF CALIFORNIA, LOS ANGELES, 9/46 - 9/67

LABOR RELATIONS REPRESENTATIVE, FORD MOTOR COMPANY, WILMINGTON, CALIF., 6/46 - 9/46

TRAINING AND PERSONNEL WORK, U.S. ARMY, NORTH CAMP HOOD, TEXAS, 9/45 - 1/46

LABOR RELATIONS REPRESENTATIVE, NORTH AMERICAN AVIATION, INC., EL SEGUNDO, CA., 6/43 - 1/45

MIDWEST DIRECTOR, COMMISSION TO STUDY THE ORGANIZATION OF PEACE, CHICAGO, ILLINOIS, 6/41 - 4/43

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

WITNESS: U.S. CONGRESSIONAL HEARINGS ON LABOR REFORM LAW OF 1954

WITNESS: U.S. CONGRESSIONAL HEARINGS ON MISSING LABOR LEGISLATION AND RELATED NATIONAL LABOR RELATIONS ACT, DAVIS-BACON ACT, AND WALSH-HEALEY ACT PROBLEMS

WITNESS: BRITISH COLUMBIA MINISTRY OF LABOR, ON TAFT-HARTLEY ACT SEPARATION OF BARGAINING UNITS FOR ARMED GUARDS

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

ARTICLES, MANY ON FILE AT U.C.L.A. AND REQUESTED, AND PUBLISHED IN THE LABOR RELATIONS [illegible] (BOOKS?)

FOLLOWING AREAS: ADR FROM ATTACHED BIO SHEET, TO CLIENT DESIRED; I DO NOT HAVE THE SPECIFIC CITATIONS

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

RONALD REAGAN "1ST" SUPPORTERS (#500?)

PUBLICATIONS

Articles are published in the following areas:

- The Economic Effects of Fair Trade Legislation
- The Local Retail Exemption from the Fair Labor Standards Act
- The National Labor Relations Act, and Its Effects on Productivity
- The Taft-Hartley Amendments, and Their Effects on Productivity
- The Wagner Act, The Lea Act, and Influences on Featherbedding
- Judicial Interpretations of Numerous Provisions of the Wagner, Taft Hartley, and Labor Reform Laws
- Labor-Management Arbitration
- California Statutory and Common Law, and Public Employee Relations
- Union-Management Relations in Public and Private Education
- Anti-Trust Legislation and Its Applicability to Labor-Management Relations
- Fulfilling the Government's EEO-AAP Policies: A Management System
- The Character and Qualities of an Ideal American President
- International Economic and Ideological Issues
- The Development of Professional Public Employee-Employer Relations
- Human Factors in Implementing Management Systems
- Behavioral Science Concepts: Dealing with Challenging Superior-Subordinate, Line-Staff, and Union-Management Relations
- The Role of Government in Business Decisions
- Creatively Planning for the Executive's Balanced Life
- The Nature, The Barriers, and Effective Principles of Managerial Communications
- The Effect Management of TIme
- The Professional Nature of Management
- The Legal Protection of Labor Union Rights

The above studies and others were published in such university and other law journals, professional association journals, and labor union and industrial publications as the following:

- U.C.L.A. Law Review
- Journal of The California Association of School Business Officials
- International Association of Machinists Reports
- Washington Report on Labor, Chamber of Commerce of the United States
- University of Virginia Law Review
- Public Personnel Association Publications
- Vital Speeches of the Day
- Journal of The American Society of Association Executives
- Southern California Business, Los Angeles Chamber of Commerce
- Labor Law Journal
- Baylor University Law Review
- World Affairs Journal, University of Southern California
- Training and Development Journal, American Society for Training and Development

The California Administrator, Association of California School Administrators
Journal of the American Dietetic Association
Personnel Administrator, American Society for Personnel Administration
Journal of the College and University Personnel Association
Journal of Marketing
American Business Law Journal
Various Industry Journals

The following subjects were published in The Records of the United States Congress, following testimony on requested research:

Ambiguities Resulting from Overlap Problems Between the Walsh-Healey and Davis-Bacon Acts
Evaluation of Landrum-Griffin (reported by Members of Congress to be "the most helpful testimony in the nation, in the preparation of the Labor Reform Law of 1959.")
Labor-Management Missile Base Disputes and Their Administrative Disposal

The following Professional Management Development Books with supporting cassettes are published and in use in government, industrial and university education programs:

The Art, Science and Profession of Management
Human Values in Management
Managerial Communications
Motivational Factors in Management
The Effective Use of Management Time
Rational Problem Solving and Decision Making
Managerial Creativity
Personal, Balanced Goal Development
Managing by Goals and Results
The Law Governing Management's Obligations and Rights During Union Organizing Campaigns

The following book is currently in preparation for publication:

The Professional Manager

MEMBERSHIPS AND SERVICES

The following are current and past professional memberships and services:

Beta Gamma Sigma, Business School Scholarship Honor Society
Kappa Alpha Psi, Business School Leadership Honor Society, and Faculty Advisor
AISEC, International Association of Students in Business and Economics, Faculty Advisor

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

THIS WILL BE DONE EXCEPT IF APPROVED, HAVING MY CONSULTING CORPORATION CONTINUE MAKING MY PROFESSIONAL MANAGEMENT CASSETTES AND NEW TUNES AVAILABLE DIRECTLY OR THROUGH ANOTHER OUTLET.

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

NONE

a.

3. Has a commitment been made to you for employment after you leave Federal service?

N/A

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

YES

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE; ONLY MY CONSULTING CORPORATION'S PENSION PLANS. DEFERRED INCOME SOURCE WILL EXIST, IN THIS AREA; MY KEOUGH PLAN IS WITH TIAA-CREF (RETIREMENT AND CREF EQUITY SAVINGS.

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

NONE FORESEEN; IN A TOTAL UNDER $10,000, I HOLD AN E BOND, APPLE, INC., STOCK, WESTLANDS BANK STOCK, STETECK, AND ANNUITIES WITH AMERICAN EQUITABLE LIFE INSURANCE (FIDELITY INSURANCE & LOAN AND FAR WEST SAVINGS & LOAN) AND WITH BRAILLE INSTITUTE.

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

NONE.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

NONE.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I WILL TAKE ANY ACTION REQUESTED BY APPROPRIATE GOVERNMENT AUTHORITY.

Senator NICKLES. Thank you, Mr. Van de Water.

If I am the only Senator, this may be one of the shortest hearings that you may have.

I have a couple of questions: You mentioned your work as a professor. Are you an attorney?

Mr. VAN DE WATER. I am an attorney at law.

Senator NICKLES. Have you actually done work with the National Labor Relations Act?

Mr. VAN DE WATER. Yes, I have, Senator Nickles.

A number of years ago I was handling cases with the Board, but that has not been for at least 20 years.

Senator NICKLES. Have you had any professional experience with the act?

Mr. VAN DE WATER. A great deal.

Senator NICKLES. In the last 20 years?

Mr. VAN DE WATER. Yes. Often I have been involved in training employees, company officials, and union officials constantly in reference to the law and in helping them to understand what the requirements of the act are.

I have been involved in helping companies to understand what they are required to do under the act, helping them to see that they obey the law; and I might say, Senator, that never once—although I have many times been involved with Board matters—has there ever been found by the National Labor Relations Board an unfair labor practice on my part or by any client that I represent.

Senator NICKLES. It has come to my attention that somebody has mentioned that they had reservations about your being antiunion. In your testimony you mentioned that on occasion you were jointly retained by the Communications Workers and also Pacific Telephone & Telegraph. Could you explain the circumstances of your being retained by both the union and the employer?

Mr. VAN DE WATER. Yes, I can, Senator.

The decision was made by the Communications Workers of America jointly with Pacific Telephone & Telegraph Co. that divisions had grown up between them over a number of years. Among the people who felt this division was Mr. William Demers who is now vice president of the Communications Workers of America.

The same was felt by the executives on the management side. They felt that if only they could be able to communicate more effectively with light in place of heat that they could be able to build their relationships on the basis of emphasizing what is right not who is right in their relationships.

Out of the training that we had together, in meetings and conferences to assure that both sides had the opportunity to learn to be good listeners and not merely to be good speakers, they were able to solve disputes that used to exist.

As a matter of fact, Mr. Demers has since said that whereas before they would have 90 percent of the grievances go into formal process, almost never since they have learned to work together effectively have they needed to do this. There has been an enormous saving in the human relationships to have parties work in that way and that spirit. It has been through this specific training program.

Senator NICKLES. Do you still have a good relationship with Pacific Telephone and also the Communications Workers?

Mr. VAN DE WATER. Yes, sir, I do.

Senator NICKLES. You also mentioned that you were retained by the International Association of Machinists. Could you elaborate on what you did for the machinists?

Mr. VAN DE WATER. Yes. I received a call at the university from John Snyder, who was then president of the largest lodge—lodge 727—of the International Association of Machinists at Lockheed and many other companies in the San Fernando Valley in southern California.

He had heard of me because of his members' participating in my classes and asked if I could come out and train shop stewards and union officers on the working of the law, what their rights were under the law, and how they could better fulfill their purpose, not only in reference to matters involved with union organizing campaigns, but also in reference to building relationships with the companies to be able to make the gains they felt that they deserved in the process of collective bargaining.

I carried on a number of sessions at the labor union hall for lodge 727. Then from that the lodge at the Douglas Aircraft Co. learned of the effect of that kind of training. Therefore, I was employed by the lodge at Douglas Aircraft Co. to do exactly the same thing—to help their shop stewards and their officers be more effective in accomplishing the objectives that the unions had set forth for themselves.

Senator NICKLES. It would seem to me, if you were deserving of that antiunion label that somebody was trying to place on you, that these unions would not have employed you, used your services, or worked with you. Is that a correct assumption?

Mr. VAN DE WATER. They often expressed this to me and said that they were grateful that a person of my position was willing not to take sides but to help them understand what their full rights were so that they could be the most effective people in representing the employees that they possibly could. Often this was expressed by the leaders of the unions.

Senator NICKLES. You alluded to this a little earlier or touched on it: Have you ever been charged with violating the National Labor Relations Act or the Landrum-Griffin Act in connection with any of your work?

Mr. VAN DE WATER. Yes, I have, sir.

Senator, I have had charges filed by labor unions that I have violated the law. Every one of these charges was thrown out at the field examiner level, in those past years when I was deeply involved in this field. Every one of them was thrown out at the field examiner level except one.

That was a case involving a corporation where the regional director ruled that the action taken was illegal. On appeal, unanimously the National Labor Relations Board found that the regional director was in error and ruled that the act was not illegal.

Senator NICKLES. Have you ever been found guilty of any of the violations of the National Labor Relations Act or Landrum-Griffin Act?

Mr. VAN DE WATER. Never once, Senator.

Senator NICKLES. That buzz meant that we have a vote on. I will ask you another question, and then we will recess briefly.

Just to make sure that the record is clear and that people here in the community who are concerned with the NLRB understand, can you make a commitment to this committee and to the Senate that you will do the best of your ability to administer the National Labor Relations Act in a fair and impartial manner?

Mr. VAN DE WATER. Senator, because I have done this all these past years since the early 1930's, even when I was for a temporary time employed full-time by North American Aviation and the Ford Motor Co., my battle was to see that management acted in complete respect of the rights of labor, dealt with the labor union on the basis of law and integrity, and constantly worked to bring labor and management to more effective cooperation.

I did this in reference to situations where I would be training either unions or companies separately or in combination, emphasizing that we must work to obey the letter and spirit of the law, so that we can be able to build trust and confidence and minimize the divisions that this Nation has, if we are to be the kind of nation we were intended to be.

I have always made that my passion and my primary purpose—not to engage in activities which would cause division, but rather to work with the parties to be able to build unity and cooperation.

Because of this fact, I feel I am uniquely qualified to be totally unbiased, objective, and with the highest integrity, to see that this act is fulfilled in accordance with its letter and spirit as the Chairman of the National Labor Relations Board.

Senator NICKLES. Mr. Van de Water, I appreciate your comments. More importantly, I think your answers have been very concise and to the point. I appreciate that.

We do have a lot of things that are before us today. Because of the vote I think we will recess this meeting for 10 minutes. Senator Kennedy indicated to me that he would vote and return, and he has questions to ask you. Then we have a couple of other witnesses before the committee today.

I would, for the record, like to enter a couple of telegrams and letters endorsing your nomination to serve as Chairman of the National Labor Relations Board.

One is from Michael Riley who is president of the Joint Council of Teamsters, No. 42. I will read his short endorsement.

He says:

With great pleasure, I add, to what I know must be a growing list of endorsements, my support of John Van de Water for Chairman of the National Labor Relations Board. I have known John for almost 25 years. It was my pleasure to study under his direction various courses in labor relations, particularly labor law, at the University of California, Los Angeles Extension. Since that time, I have worked with him in many labor-management endeavors and found him to be fair and unbiased. I wholeheartedly support his appointment to such an important and sensitive position. Sincerely, Michael J. Riley, president, Joint Council of Teamsters No. 42.

We have one other little column by Mr. Demers, vice president of the Communication Workers in California. I will include this article for the record, without objection.

[The material referred to follows:]

JOINT COUNCIL OF TEAMSTERS 42
1616 WEST 9 ST ROOM 500
LOS ANGELES CA 90015

western union Mailgram

4-0403317268 09/25/81 ICS IPMRNCZ CSP WSHA
2133834242 MGM TDRN LOS ANGELES CA 137 09-25 0147P EST

JOHN VAN DE WATER, CHAIRMAN
NLRB 1717 PENNSYLVANIA AVE NORTHWEST
WASHINGTON DC 20005

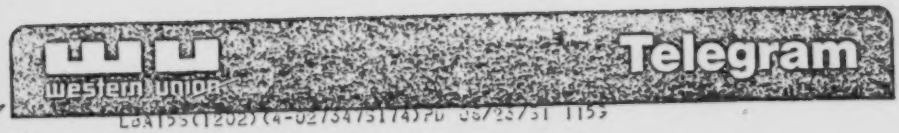
THIS IS A COPY OF THE MAILGRAM SENT TO SENATOR ORRIN G HATCH.

DEAR SENATOR HATCH

WITH GREAT PLEASURE, I ADD, TO WHAT I KNOW MUST BE A GROWING LIST OF ENDORSEMENTS, MY SUPPORT OF JOHN VAN DE WATER FOR CHAIRMAN OF THE NATIONAL LABOR RELATIONS BOARD. I HAVE KNOWN JOHN FOR ALMOST 25 YEARS, IT WAS MY PLEASURE TO STUDY UNDER HIS DIRECTION VARIOUS COURSES IN LABOR RELATIONS, PARTICULARLY LABOR LAW, AT THE UNIVERSITY OF CALIFORNIA, LOS ANGELES EXTENSION, SINCE THAT TIME, I HAVE WORKED WITH HIM IN MANY LABOR- MANAGEMENT ENDEAVORS AND FOUND HIM TO BE FAIR AND UNBIASED. I WHOLE HEARTEDLY SUPPORT HIS APPOINTMENT TO SUCH AN IMPORTANT AND SENSITIVE POSITION, SINCERELY
MICHAEL J RILEY, PRESIDENT JOINT COUNCIL OF TEAMSTERS #42

14:00 EST

MGMCOMP



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ICS IPMRNCZ CSP
2133273371 TDRN LOS ANGELES CA 10 08-23 1153A EST
PMS JOHN R VAN DEWATER RPT DLY MGM, DLR
2052 MOUNT SHASTA DR
SAN PEDRO CA 90732
CONGRATULATIONS YOU HAVE MY SUPPORT AND TH SUPPORT OF CWA.
W C DEMERS, VICE PRESIDENT
3540 WILSHIRE BLVD SUITE 815
LOS ANGELES CA 90010
NYNN

WU 1201-SF (RS-69)

IAM PRIDE

September, 1981 Vol. 7 William C. Demers, Vice-President No. 4

Reagan Appointee To the NLRB

John Van DeWater, a San Pedro, Calif., resident has been proposed by President Ronald Reagan as a member of the National Labor Relations Board. If confirmed by Congress, he would also become Chairman of the NLRB.

District Eleven Vice-President William C. Demers, when queried about the proposed appointment, replied:

"Labor associates in California and elsewhere have informed me that Mr. Van DeWater, in their opinion, is anti-labor, and they equate his past association with management as a consultant to support their contention.

"I have personally known Mr. Van DeWater only a short period of time, about seven or eight years.

"Whether his past record, as related to me, is justified or not, I do not know. I know only that my relationship with him has indicated to me that he is a gentleman of honesty and integrity. A man who believes in people. A compassionate man. A man who espouses the philosophy that 'It is not who is right, but what is right.'

"I believe, based on my knowledge of Mr. Van DeWater, that he is not anti-Union, and when appointed will endeavor to be even-handed and to bring labor and management closer together."

Senator NICKLES. With that, we will be in recess until either I or Senator Kennedy return. If he returns before I do, we will continue the meeting with his questioning and move as rapidly as we possibly can. We will stand in recess for 10 minutes.

[Recess taken.]

The CHAIRMAN. We will now turn to Senator Kennedy for his questions.

Senator KENNEDY. Thank you, Mr. Chairman.

Mr. Van de Water, as you probably know, the Congress has been concerned in the last few years with the activities of the so-called labor-management consulting firms. I would like, if I could, to ask you a few questions in that area.

Your resume indicates that you have been president of the Van de Water Associates since 1949. Have you been in charge of the firm's activities from 1949 to the present?

Mr. VAN DE WATER. Yes, I have, Senator, and have participated in a number of programs which I have personally given, as well as my associates who have given their own programs.

Senator KENNEDY. Let me apologize for earlier having not heard your whole presentation. I heard a good deal of it, and I have read your statement.

You mentioned your association with a number of the unions and management. Have any of those organizations or unions endorsed or supported your nomination for this position?

Mr. VAN DE WATER. Yes, Senator. For example, upon the article first coming out on my nomination by the President, I received a telegram from Mr. William Demers saying, "Congratulations. I am behind you, and so is the CWA."

The CHAIRMAN. Excuse me. I believe that has been inserted in the record already.

Mr. VAN DE WATER. Yes, Mr. Chairman.

And the telegram from the vice president of the Communications Workers of America was followed up by an article in which he stated—and that has been inserted in the record just now, I understand—that he has received telephone calls from people locally and abroad asking his views, and then he gives the statement that will be in the record about the relationships I have in dealing with labor and management from his own experience.

Also, Senator, I have had calls from others in the labor unions with whom I have dealt over these past years who have called to congratulate me and expressed their gratitude for the nomination.

Senator KENNEDY. You mention in your opening statement that you have been employed jointly by the American Federation of Teachers, the California Teachers Association, and other groups, on page 3 of your testimony. Then you also mention working with California machinists locals to train their leaders on labor law.

Then I think that during the course of the exchange Senator Nickles mentioned a number of other associations. Have you heard from those other unions, or have you just heard from individuals?

Mr. VAN DE WATER. I cannot recall how many. I have a stack of letters 3-feet high I have not even read yet, Senator, but I have had calls from numerous people, both labor and management.

Senator KENNEDY. If you would like to go through them and forward any you think would be worthwhile for us to know about, I think we would be very appreciative.

Mr. VAN DE WATER. Surely.

Senator KENNEDY. Can you tell us about the services you performed for the firms as clients?

Mr. VAN DE WATER. I would be glad to. My major service in these last 15 years has been to aid enterprises, public and private, to improve their professional management. I have done this in several ways.

One is to give seminars for management personnel in the area of managerial creativity, in the area of rational problem solving, in the area of management by objectives, in the area of communications, of listening skills, of motivation, of leadership, and of how to build cooperation with their employees—unionized or nonunionized—to build mutual trust and confidence for higher productivity.

I have trained them in reference to management systems, and I have trained them in reference to the code of ethics necessary for management to deserve the trust and confidence of their employees.

I have given training to employees at the request of management in reference to what the labor laws are, exactly what they mean, and what is the intent of Congress in reference to the parts of the laws that would be of interest to them.

I have trained members of management to understand our labor laws, and the purpose of the Congress in the passing of those laws, and each part of them when they became relevant.

I have on numerous occasions helped organizations by establishing interview evaluation and recommendation programs to build programs with the bubbling up of the thinking of their employees throughout the organization at all levels and in all functions to learn how better they could improve the managerial competence of their institutions and have secured vital changes in those institutions' capabilities as a result of this means of approach.

Senator KENNEDY. At any time did you provide consultant service to employers at a time during union organizing campaigns?

Mr. VAN DE WATER. Yes, quite a few times, Senator.

Senator KENNEDY. What sort of services did you provide?

Mr. VAN DE WATER. My duty was, at their request, to see that their employees understood what the laws were, to be sure that the management knew what the laws required, and to train them in how to communicate with their employees for their side of the disputes that might arise over whether there should be a union or not.

Senator KENNEDY. Did you prepare any booklets or documents to try and make those points?

Mr. VAN DE WATER. Yes, I have prepared visual, audiovisual, and also purely audio programs at the request of Fisher Scientific Corp. I have prepared a series of cassette programs that govern each of these areas of professional management that I mentioned, including a cassette program to help management understand during union organizing campaigns what they had the right to do in presenting their side with the employees of course who were proun-

ion and against and what the unions had the right to do during such campaigns as well.

Senator KENNEDY. Do you have copies of those materials? Could you make them available?

Mr. VAN DE WATER. They have been made available; and I have been told, Senator, that those who work with you on the committee have requested the opportunity to have them. They have been made available to them many weeks ago.

Senator KENNEDY. I see.

Staff mentions that we have not had any of the cassettes. We have had copies of your written articles but none of your audio materials.

Mr. VAN DE WATER. They were made available to your staff if they wished to secure them. I was told that when the question came up because I wanted to be sure.

When Mr. Forcsey asked for these materials, I asked to be sure that they were made available to him—anything I had that I had published for his study—many weeks ago.

Senator KENNEDY. I would ask the chairman if we could have a chance to examine them.

The CHAIRMAN. I think we have those. We will certainly make them available.

Mr. VAN DE WATER. As a matter of fact, Mr. Chairman, I was told that the materials had been made available, and they could have had them—if they did not get them—a number of weeks ago.

Senator KENNEDY. This was from 1961 through 1970 and from 1970 to the present that you did at different times provide consultant services to employers during these union organizing campaigns, and your testimony is that the kinds of services you provided were of the nature and description which you have just described for us—am I correct?

Mr. VAN DE WATER. Yes. Any time I was requested by a labor union I was glad to serve them. At any time I was requested to by a company, I was glad to help that company. I have been requested by State, county, city, and Federal Government officials, and I was glad to be of help to them.

I have explained the laws, their rights under those laws, and the right to engage in strategies on both sides to be able to gain their side and its understanding by the employees.

Senator KENNEDY. You indicated to the committee staff that you were involved in the congressional debate on the Landrum-Griffin Act in the late 1950's. Could you describe your activities for us?

Mr. VAN DE WATER. Yes. As stated to Mr. Forcsey when he questioned me on this during your absence, Senator, I noted that I had been requested to testify under Congressman James Roosevelt and for Congressmen Landrum and Griffin on the labor reform bill of 1959.

I gave my opinions in reference to each aspect of that bill and also made suggestions that would, I felt, improve upon the bill by additions.

Senator KENNEDY. Were you employed by anyone connected to that debate?

Mr. VAN DE WATER. I was never paid by anyone. This was at my own expense when I would come back at the request of Congress to testify.

Senator KENNEDY. In the mid-1960's the industrial relations division of the NAM sponsored a public relations campaign called "A Program That Could The Union Monopoly Power." Are you familiar with that program?

Mr. VAN DE WATER. I recall it, Senator, but it is in the background of my mind. I do recall that program—yes.

Senator KENNEDY. As I understand, its purpose was to encourage Congress to enact legislation applying the antitrust law to union activities.

Mr. VAN DE WATER. I cannot recall what the purpose specifically was.

Senator KENNEDY. Do you or do you not remember whether you were asked to participate in the campaign?

Mr. VAN DE WATER. I do not recall participating with the NAM in any campaign, although I was requested to do some legal research for them.

Senator KENNEDY. On what matter? On this matter?

Mr. VAN DE WATER. In reference to the laws and their interpretation by the National Labor Relations Board simply relating to the law itself.

Senator KENNEDY. On applying antitrust laws to union activities?

Mr. VAN DE WATER. I do not recall that that came up with the NAM. I think they simply asked me to give an analysis of the National Labor Relations Board's decisions involving various aspects of the National Labor Relations Act, as amended—to my best recollection, Senator.

Senator KENNEDY. Would you consult your files to see if they contain indicate any additional information?

Mr. VAN DE WATER. I have no files on any matter of that nature. That was done for a short period of time, and no files were retained by me, other than to pass on to them the information they requested. I do not have any files on those matters.

Senator KENNEDY. In the "Congressional Record" of October 10, 1962, Congressman Libinati appears to list you as an official member of the NAM Center for the Study of Union Power.

Mr. VAN DE WATER. I cannot recall any such status, Senator. I was simply asked to give them information, and that is all I did—not as a member of any organization at all—not as a member of NAM or other than to give the information requested.

Senator KENNEDY. So that information would be incorrect?

Mr. VAN DE WATER. To my knowledge it is, sir.

Senator KENNEDY. Following the defeat of the labor law reform bill in 1978 the NAM formed a group which was called the Committee for a Union-free Environment. Are you familiar with that group?

Mr. VAN DE WATER. I do not know about that group.

Senator KENNEDY. So you were not associated with that group?

Mr. VAN DE WATER. No; I was not.

Senator KENNEDY. You have indicated that you would like to help the Board move its caseload along more rapidly.

Mr. VAN DE WATER. Yes, sir.

Senator KENNEDY. Do you know the number of cases that are before the Board now?

Mr. VAN DE WATER. Yes. At the level of investigation before the entry of a charge by the general counsel there is a backlog of a few thousand—I believe today it would be about 2,500, to my best recollection. At the ALJ level I believe it is in the area of 3,000-and-some.

At the Board level itself there are cases pending; I cannot recall the exact number now. There are slightly more than the number of cases pending before the Board as of a year ago.

Senator KENNEDY. It is my understanding that in all of those categories we are talking of something in excess of 10,000 cases.

Mr. VAN DE WATER. There are many cases pending, Senator, that need to be moved along. But you do recall that it includes—when you talk about backlog—those that are in the normal process, up to date, as well.

Senator KENNEDY. The first round of the Reagan budget cuts reduced the NLRB budget from $132 million to $128 million. Do you know what the implications of that would be in terms of the caseload?

Mr. VAN DE WATER. Any amount that is removed from the budget of the National Labor Relations Board either has to be handled by finding ways to increase the effectiveness of the management of the Board's activities or to restrain the Board's capability as they do not have at present a sufficient number of administrative law judges to move the cases along.

The limitations can have a deleterious effect unless, of course, the Board can find ways to build greater effectiveness in the moving of the cases forward.

Senator KENNEDY. I think we are going to see that pattern emerge in a number of different agencies myself. Hopefully I am wrong, but I do not think I am going to be.

Does the newly announced across-the-board 12-percent cut apply to the NLRB?

Mr. VAN DE WATER. It will apply unless the Congress decides to the contrary.

Senator KENNEDY. How are you going to be able to reduce the number of cases with those additional cuts?

Mr. VAN DE WATER. A number of things will have to occur, Senator. Among them would, of course, be taking money out from the training budget, reducing the amount of travel, finding ways to control the use of the telephones, finding ways to be able to be sure that the number of steps is not excessive in the processing of cases, and yet at the same time in these and many other fields being sure that there is accuracy and correctness in the studies done before decisions are made at each step.

Senator KENNEDY. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Kennedy.

Senator Williams?

Senator WILLIAMS. Thank you, Mr. Chairman.

I am pleased to belatedly welcome you to these hearings, Mr. Van de Water.

Mr. VAN DE WATER. Thank you, Senator.

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Senator WILLIAMS. I have just one statement I would like to make, and the balance I would like to put in the record if I might, Mr. Chairman.

The position of Chairman of the National Labor Relations Board is one of great importance to the peaceful resolution of labor management disputes. The occupant of that position tends to set the tenor for labor-management relations in our country.

It is imperative that the occupant of that position be perceived as possessing a sense of fairness and objectivity which will enable him to listen and work with all sides in the resolution of disputes under the National Labor Relations Act.

The balance of my statement, Mr. Chairman, I would like to put in the record.

The CHAIRMAN. Without objection, it will be inserted.

Senator WILLIAMS. I would just make another observation if I might, Mr. Van de Water.

Recent nominations which have come to us for positions with the Board or on the Board have met with resistance by those who looked at past history of the nominees and thought they saw in their activities something that would suggest, not bias on one side of the labor-management equation, but the appearance of possible bias.

We had long, long discussions and debates trying to get through the suggestion of appearance that was so disturbing to some members and try to get to the individual, qualifications, objectivity and impartiality.

I regretted that I could not be here to hear your statement, and I am sure that you gave the members your guiding principles which you would bring to the chairmanship of the Board, and I would like to hear them if I might.

Mr. VAN DE WATER. All right. The guiding principles I have followed, consistent with the extension of the answer to Senator Kennedy's question, would be these:

When I have been asked to speak before corporation executives, before employees, and before first-line supervisors, I have made clear constantly what the law is, and why each part of the law was passed as seen by the Congress from its own documentation.

For example, I would explain chronologically the passage of the Wagner Act and refer for example to section 1 and why it was felt that the Wagner Act was essential for the country, so that there would be a free and fair opportunity for decision on representation to be made.

Then I would go on to note each of the illegal practices by management listed there and give examples of situations where violations of that law had occurred and how they were corrected.

Then I would move on to the amendments of 1947 and the amendments of 1959 and give examples of their application as well.

When I would speak before employee groups—as I have done many times at the request of companies either during or before union organizing campaigns—I would always begin with the statement that,

> This company has requested me to explain the labor law to you in an impartial manner; that I would not be here were it not to be an impartial presentation; that I am not here in any way to influence any employee on whether to vote or how to vote in union elections. I am here rather to see that you know what the law is; that

it is none of the company's business by law whether you are unionized or not; it is your business as employees--you are the voters, and you have the opportunity under section 8(c) of that statute to have the right of free speech yourself, and the other parties have the right of free speech to present each side so that you can be an intelligent electorate as you make your decisions.

Then I would explain how the law operates in terms of the authorization cards, of the determination of an appropriate bargaining unit, the holding of elections, the way in which that was carried out, the opportunity for objections, and the means whereby there could be a determination as to the justification for actions by unions and by companies or the lack of justification which might cause a determination that the election was void and require additional action.

I would note that when certification of unions occurred or when decertification of unions occurred where the parties stood under the law.

I would note that if there was a union certified there was a duty for the union and the company to bargain in good faith, and I defined what that was.

Then I would note that if the parties could not get together and reach an agreement there was the right of the union to strike. There was the right of the union to exercise its free speech to convince the employees as a whole to go along with that strike.

I would explain the right of management—management's role—during strikes as well, in order that people would know exactly what the law was.

Other than that, I did not ever go into with employees suggesting how they should vote or whether they should vote in a union election.

I would at the same time however train supervisors to be sure that they knew what their duty to the company was as supervisors representing management, explaining the management side, knowing that the employees would hear from the union's side what the union wished, and I explained to the employees that they should listen to both of these sides and then make up their minds because it was their decision to make.

Senator WILLIAMS. Coming to this position, Do you have any hesitation at all about feeling that you can be objective and impartial in rendering decisions interpreting the law?

Mr. VAN DE WATER. None whatsoever, Senator.

I have mentioned earlier that I have been in this field since 1943. I have been an educator for decades in the field. I have had international, regional, and local union officers and shop stewards in my classes by the hundreds. Many of them I have known as friends. Many of them have expressed their gratitude for the way in which I made my presentations.

May I say this—that when it was my duty to represent management by being employed as an attorney at law, of course then I would present management's side. I would show management what their rights were.

When I was employed by a labor union, just as much I would show them what their rights were—what they had the right to do under the law.

It depended on which group I was speaking for as to whether I was giving the rights of one side and the duties of the other,

emphasizing what they should know; and I would do the same for unions and for corporations.

Although I have been an attorney generally representing management when it came to National Labor Relations Board matters, I would never permit, during continuance as the attorney for the company, any violation of that law whatsoever. That has always been my stand.

Senator WILLIAMS. I thank you for that statement.

I have just one more question: I do not know if there are any proposed changes in our basic labor laws, but from time to time we do consider proposals to change the law.

If during your tenure that should come to pass and there were legislative decisions under your basic law, would it be your position to not be involved in any way in the legislative process by advice or counsel or other suggestion as to changes of law?

Mr. VAN DE WATER. I understand that it is the duty of the Department of Labor to be involved with you in reference to changes in the law. I have never refused—when I have been requested to by a congressional committee and found it to be appropriate—to appear and be available as legally required, as proper within the law.

Of course I would not make any presentations or involve myself in reference to changes that properly were in the province of the Labor Department.

Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Unless there are any other questions, Mr. Van de Water, I think you are an excellent selection by the President and wish you well.

Mr. VANDEWATER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

We will call our next witness at this time—Mr. Thomas Donahue, secretary-treasurer of the American Federation of Labor and the Congress of Industrial Organizations.

We are happy to welcome you to the committee and will be interested in your statement.

STATEMENT OF THOMAS R. DONAHUE, SECRETARY-TREASURER, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, WASHINGTON, D.C., ACCOMPANIED BY: RAY DENISON, DIRECTOR, LEGISLATIVE DEPARTMENT, AFL-CIO; AND LAURENCE GOLD, SPECIAL COUNSEL, AFL-CIO

Mr. DONAHUE. I am Thomas R. Donahue, secretary-treasurer of the AFL-CIO.

I am accompanied today by Ray Denison, the legislative director of the AFL-CIO, and Larry Gold, our counsel.

You have a copy of the statement which we have submitted, Mr. Chairman. I would like to go over the highlights of that statement and ask that the full statement be included in the record.

The CHAIRMAN. Without objection, we will put your full statement in the record at the completion of your oral presentation.

Mr. DONAHUE. My purpose is to urge that the Senate reject the nomination of John R. Van de Water to be Chairman of the Na-

tional Labor Relations Board on the grounds that he does not meet the criteria applied by this committee in dealing with past appointments.

I would just like to mention a few of the matters which arose in the consideration of the past two nominees for the Board.

During the August 5, 1980, floor debate on the nomination of Don Zimmerman to be a Board member, Senator Hatch said, and I quote:

> Never before in the agency's history has there been a more compelling need to have a Board member who is perceived as objective and, most important, independent.

During the August 22, 1980, hearing on the nomination of John C. Truesdale for a full term as a Board member, Senator Hatch said:

> More than any other agency or arm of the Federal Government, the responsibility inherent in the purpose of the National Labor Relations Board can be symbolized in a scale. Its purpose is certainly less activist than judicial. It is a policymaking institution that can make the difference whether or not we have labor-management chaos or a just labor-management relations.

To refresh the recollection of any who may have forgotten, on the basis of the test of fitness to serve followed in the last Congress, no action was taken on Mr. Truesdale's nomination with the result that the nomination lapsed.

The vote on Mr. Zimmerman's confirmation was 68 in favor and 28 opposed, including in the latter group Senators Hatch, Armstrong, Hayakawa, and Humphrey.

I would also note, Mr. Chairman, that Mr. Truesdale's nomination was made after extensive consultation by President Carter's administration—consultation with both management and labor. Mr. Truesdale had served the Board for 23 years, including 5 as the Executive Secretary, and had worked for the National Academy of Sciences.

While the question of whether he had shown balance in his 3 years as a Board member was extensively debated, it is a fact that in the cases in which the Board's members split on the proper result, he voted for the position favorable to labor 55 percent of the time and against that position 45 percent of the time. It is a fact that he has never spent a moment on the payroll of any labor organization.

With regard to Mr. Zimmerman, it should be noted that similarly there were extensive administration consultations with management and labor. He spent his professional career with the Office of the Secretary of Defense, the Office of Management and Budget, a trustee in bankruptcy of the Penn Central, and then as a legislative assistant to that distinguished Republican, former Senator Javits, and as counsel to the Republican members of this committee. He, too, has never spent a moment on the payroll of any labor organization.

The labor movement agrees with the basic points which were made in the consideration of those nominations last year that in making nominations to the NLRB, which is indeed a judicial body which can make the difference as to whether or not we have labor-management chaos or a just labor-management relation, the administration should indeed attempt, in the words of the counsel of

the chamber of commerce, Mr. Thompson, "to find some kind of consensus."

We believe, as you said, Senator, that there is a compelling need to have a Board member who is perceived as objective and, more importantly, independent.

We submit that since the Senate in applying those criteria concluded that Mr. Truesdale's nomination should not be confirmed and that Mr. Zimmerman's confirmation was subject to serious question, Mr. Van de Water should not have been nominated and cannot be confirmed.

In the first place, while as is usual with any pending governmental appointment, there was some gossiping about it in Washington concerning several potential nominees for NLRB Chairman.

So far as I am aware, organized labor's views on Mr. Van de Water were never sought. Indeed, I do not know of a single chief officer of a single AFL–CIO national union who had heard of Mr. Van de Water prior to the day his nomination was announced.

So much for the effort to, in Mr. Thompson's words, find consensus between management and labor.

Of far greater moment, it has been our consistent position, as stated by Mr. Meany in his May 8, 1970, testimony to this committee opposing then the nomination of Edward Miller to be Board Chairman, our position has been and remains as he spelled it out. He said:

> The board has a specialized jurisdiction. It handles only matters involving employers or unions or both. In unfair labor practice cases, more often than not, unions and employers are on opposite sides. The same is true in representation proceedings. They always involve employers and unions, and employers and unions are usually on opposite sides.
>
> Moreover, labor cases are often sharply controverted with emotions running high on both sides.
>
> It seems apparent to us, therefore, that great care should be used in selecting members of the Labor Board to avoid persons who are so identified with either unions or employers that they may not be able to hold the balance even between them.
>
> We believe specifically that no one should be appointed to the board from the ranks of labor or management.

We have followed the counsel that a decent respect for the opinion of the parties regulated by the Board calls for the appointment of individuals whose careers have been devoted to bringing labor and management together, not of individuals who have been employed by one side or the other to advance that side's interest or who intend to seek such employment when they leave the Board.

We see that principle as properly applying the axiom that justice should not only be done but that it should appear to be done.

The labor movement has had some influence with certain administrations, but we have not pressed for the appointment of a union lawyer or a union official to the NLRB. Indeed, there has never in the Board's 45-year history been such an appointment.

Management, to be sure, has not shown similar self-restraint. The result has been, to cite the recent instances, the appointment of Chairman Edward Miller, General Counsel Peter Nash, and Board member Peter Walther, men who have interrupted careers as employer lawyers for a short stint at the NLRB.

The spectacle of Mr. Miller and Mr. Nash trading on their Board credentials as they lobbied on behalf of their management clients

against the labor law reform bill in 1977 and 1978 is perhaps the clearest example of how this practice of using Board appointments to further management's private advantage undermines the Board's integrity.

Be that as it may, so far as we are aware, the employer agents previously loaned to the public service had engaged in the relatively removed role of a legal counsel handling litigation. Mr. Van de Water has played a far more active and partisan role on the management side.

The records of the AFL–CIO Los Angeles-Orange County Organizing Committee for the years 1963 to 1972 indicate that at least during that period, Van de Water Associates served as management consultants to numerous employers who actively opposed their employees' attempts to organize.

The role of such consultants, most narrowly conceived, is to denigrate unions and collective bargaining and to play on the insecurities bred by the economic dependence of the employees on their employers.

A majority of the Labor-Management Relations Subcommittee in the House of Representatives in a 1981 report on pressures in today's workplace talked about the labor-mangement consultants.

That report concluded:

> Perhaps the most distressing aspect of the emergent consultant industry is the perspective it brings to labor-management relations. It is a philosophy of labor-management relations which is first and foremost anti-union. The defeat of unions is an end in and of itself. In many instances, consultants, come dangerously close to justifying whatever means are necessary to accomplish that end.
>
> The consultants promote a perspective of labor-management relations which exalts the short-run over the long-run, presuming that workers will vote against the union if management exercises the correct combination of manipulation, persuasion, and control during the relatively brief duration of an organizing campaign.

In preparing for this hearing, Mr. Chairman, and reviewing my formal statement, it seems to me that statement does not provide you the flavor of such an employer campaign.

I would, therefore, like to quote to you four quite brief passages from a pamphlet put out by the Alloy Die Co. of Buena Park, Calif., in connection with its effort to get certain of its employees to vote against representation by local 325 of the Aluminum Workers International Union in an NLRB election, an effort in which Van de Water Associates was the company's management consultant.

That pamphlet begins with the large title: "You Are Not the Union."

> You are you, with your own feelings, needs and desires.
>
> The union, on the other hand, is a group of paid professional organizers whose job it is to get as many dues-paying members like you as they can. It is an international organization with power over local unions all over the United States, including Local 325, City of Industry, which is now looking for your money.

Later the pamphlet notes:

> Promises are worth what they cost: Nothing. Ask yourself: Can this union guarantee me specific improved wages, benefits, and working conditions? The answer is no. No union can guarantee anything. Why? Because all they have the right to do if they win the election next month is talk. They win only the right to talk to us as your representative--to ask your company to make changes.

Further on, the pamphlet says:

> And what if the union cannot keep all the promises it has made and will make between now and the election and cannot deliver? Usually a union in that fix asks

you, its members, to help them deliver by going on strike to force your company to grant its demands.

Finally, in a big windup, in capital letters, the pamphlet says:

These are the snares that the union lays for you. The organizers and paid business agents do not mention them when they attempt to sweet-talk you into voting away your rights as employees and citizens.

Only after the gates of unionism slam shut behind you does the iron rule of union domination clamp down on you. And then it is too late.

The CHAIRMAN. Excuse me. Are you saying that Mr. Van de Water and his associates wrote that?

Mr. DONAHUE. This pamphlet was distributed to employees of the Alloy Die Co. in Buena Park, Calif., in an election contest in 1972. The Van de Water Associates was the company's management consultant during that campaign.

The CHAIRMAN. I just wanted to clarify that.

Mr. DONAHUE. I have copies of the pamphlet. It is replete, of course, with the usual and careful pro forma disclaimers of any intent to break the law or interfere in any way with employee free choice.

Of course, it is replete with fullsome statements of employer concern for the well-being of the employees—the sugar coating for the bitter pill.

For your convenience, Mr. Chairman, I have 25 copies of the pamphlet with me, and I would ask that a copy be included in the record.

The CHAIRMAN. Without objection, it will be included in the record.

Mr. DONAHUE. The issue, Mr. Chairman, is not whether those kinds of activities and materials are as we believe they are—offensive, small-minded, and mean-spirited. It is not even whether such activities are, as we believe they are, inconsistent with the NLRB's policy set forth in section 1 of the act to encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association and self-organization and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid.

Rather, the question for this committee and for the Senate is whether it is proper to appoint, as Chairman of the quasi-judicial agency charged with running representation elections and judging the legality of the conduct of the parties to such elections, to appoint a man who has devoted a substantial part of his professional career to putting together anti-union campaigns and anti-union materials.

To put that question in perspective, let me ask another: Would management and the members of the general public who believe that management should be treated with scrupulous fairness accept a union organizer of unimpeachable reputation, such as AFL-CIO organizing director Alan Kistler or the late CIO organizing director Allan Haywood? Would they accept such a person as the NLRB Chairman?

Under the standards formulated by Senator Hatch, the answer to the question posed by Mr. Van de Water's nomination and by my hypothetical question is that the NLRB's institutional integrity is best served by the consistent application of the rule that no one

should be appointed to the Board from the ranks of management or labor.

One side's armorer should not make or enforce the rules governing both sides in the ensuing contest.

In conclusion, Mr. Chairman, I would like to bring to your attention an article entitled, "How to Deal with the Union," in which Mr. Van de Water provided an insight into the theories behind his management consultant activities.

I have copies of the article with me for the committee, and I would ask that a copy be included in the record.

The CHAIRMAN. Without objection, it will be included in the record at this point along with the other article referred to.

[The pamphlet and article referred to follows:]

YOU ARE YOU

YOU ARE NOT THE UNION!

YOU ARE YOU, with your own feelings, needs and desires.

The UNION, on the other hand, is a group of PAID PROFESSIONAL ORGANIZERS whose JOB it is to get as many dues-paying members--like you--as they can! It is an INTERNATIONAL ORGANIZATION with POWER over local unions all over the United States, including Local 325, City of Industry, which is now looking for your money!

Don't be fooled by the "canned" union propoganda that they use everywhere they try to get in, regardless of the needs of the particular employees. Look at the way the "canned" salespitches they've given to you contradicted each other. First, they told you that THEY would get for you such things as "holidays" (which you already have), "vacations" (which you already have), "insurance" (which you already have), "grievance procedure" (which you already have), "(excellent) working conditions" (which you already have), "(best) wage scale" (you already have among the top rates, as we've already shown you), etc. THEN they come out with another "canned" handbill saying just the OPPOSITE -- that you have to do it all. It said that "You are the Union", and "You are the Union's real boss" and "You make your own decisions on your own Union contract". Which is it?

Anyway, "doing it yourself" -- representing yourself in your relations with your Company -- is exactly what you've been able to do in past years without any outsiders. So do you

need union representation? Should you pay them for promising you things you already have because of the close, friendly relationships which have existed over the years at Alloy Die?

Promises are worth what they cost: NOTHING! Ask yourself -- Can this union guarantee me specific improved wages, benefits and working conditions? The answer is NO. No union can guarantee anything. Why? Because all they have the right to do if they win the election next month is talk. They win only the right to talk to us as your representative -- to ask your company to make changes. But there is no guarantee that any particular change will be made. That will all depend on the give-and-take of negotiations. We will bargain in good faith if this Union comes in here; but we should not, and will not, agree to any demands that are not in the best interests of the company, or that jeopardize our business or our sales that create our jobs. We believe that our friendly, personal, direct way of getting things done for ourselves is the better way -- without strangers to our business involved.

In deciding how to vote, you must ask yourself -- Who are these strangers? Are they really qualified to represent me? Are they telling me completely and accurately everything I need to know about them to decide if I want them to represent me? Can I trust and believe them completely?

We think the answer to these questions is NO. Let's look at the facts:

-- In one of their handbills, they admit they represent only part of the ALCOA Co. workers.

Ask them if they represent the employees of Alcoa who do what you do -- manufacture of aluminum die castings -- at their Vernon, Calif. plant. THEY DON'T! Another union represents that plant! The handbill claims that this Union "knows the aluminum industry, its people and its problems". But they couldn't even convince these basic aluminum industry employees who do perform jobs like yours -- die castings -- that the Aluminum Workers Union should represent them!

-- Their handbills tell you that the LOCAL Union would represent you without control or interference by the INTERNATIONAL Union -- that "no one in the International can give the Local Union orders." NOT SO. The Aluminum Workers International Union Constitution provides otherwise. Let's look at some exact quotations from the actual language of that Constitution, which would govern your status as an employee under a contract with that Union.

ARTICLE XV - NEGOTIATIONS, Section 1:

"The International Union shall negotiate all Labor Agreements on behalf of the Local Unions."!

DOES THIS SOUND LIKE LOCAL UNION CONTROL; that "You are the Union"? It doesn't to me!

That same section goes on to say:

"If a Local Union is granted permission to negotiate its Labor Agreement, such Agreement must be approved and signed by the International President. . . ."!

So even if the Local union is allowed to negotiate, the INTERNATIONAL President -- not the President of your Local Union -- can refuse to approve and sign it! DOES THIS SOUND LIKE THE INTERNATIONAL UNION CAN'T GIVE ORDERS TO THE LOCAL? NO, SIR!

ARTICLE XV - NEGOTIATIONS, Section 2:

"The International President. . . shall be the Chairman of all negotiation committees."

THIS IS ANOTHER EXAMPLE OF HOW THE INTERNATIONAL UNION CAN AND WILL CONTROL WHAT LOCAL 325 DOES OR DOESN'T DO FOR YOU!

Yet their handbill said that "You -- the membership -- are the final voice and authority in (the) Aluminum Workers Union" and that "You elect your own Negotiating Committee". Does this Constitution provision leave you with final voice in your contract? NO! It's no wonder that the Union hasn't shown you a copy of the International Constitution!

ARTICLE XIV - REVENUE:

"The revenue of the International Union shall obtained as follows:
"(1) . . .
"(2) A per capita tax of three dollars ($3.00) each month on dues collected for every member of a Local Union.
"(3) A charter fee of twenty dollars ($20.00) to be paid by each Local upon being chartered.
"(4) . . .
"(5) Assessments as provided for herein...".

So $3 of the $5 you would pay in dues each month -- 60% -- would go to the International Union, 2,000 miles away in St. Louis, to support the International's activities everywhere else in the U.S. (such as strike benefits to strikers in Ohio, New York, or someplace else where their actions would be of no benefit to you; or money to organize other non-union plants, just as they are trying to do here, which is again of no direct benefit to you.) Only the 40% left would even be kept here for your benefit, to assist Local 325 in servicing you! IS THIS WHERE YOU WANT PART OF YOUR MONTHLY EARNINGS TO GO?

And how should we interpret the claim in one union handbill that "You need not fear assessments" when the International Constitution expressly allows for them as a source of revenue (in (5) above)?

What about International Union chartering of the Local unions? Does that suggest absence of International Union control? Not to me! If you could see the By-Laws of this Local union now seeking your dues -- Local 325 -- you would see Article II - Jurisdiction, which reads: "The jurisdiction of this Local Union shall be as set forth in its Grant of Charter (by the International) and as determined by the International Union from

time to time." Does this sound like you would control the Local Union? Or would the International Union control it? Is the International Union going to take 60% of every dues dollar and leave the local to do as it pleases? We think not. Any parent organization that makes its resources available, as these outsiders claim, will sure want to control how those resources are used! We bet that the power to take over half the revenue of the Local Union is coupled with a power to dictate policies.

-- Indeed, that's the purpose of the International Convention: to decide the policies the Union will follow in representing all employees in its bargaining units all across the U.S. One of the outsider's handbills claims that "You elect your own delegates to the International Union conventions." But how much voice will you have as a member of Local 325 in what goes on there? VERY LITTLE: Article VI, Section 4 of the International Constitution says that a Local Union gets 2 votes at the convention if it has less than 100 members, 3 votes if it has 101-200 members, 4 votes if it has 201-300 members, 5 votes if it has 301-400 members, 6 votes if it has 401-500 members, and one additional vote for each additional 500 members or major fraction thereof.

So a small local would have really no voice against the locals which each represent thousands and thousands of employees in basic aluminum production at Alcoa, Reynolds, Annaconda, etc. But that's just what Local 325 is: a small Local.

How do we know? The official U. S. Government report it filed for the fiscal year 1969 showed only $4468 collected in dues. If dues for each member were $5, that comes out to 892 members. So it would have only 8 votes at the International Convention, compared with hundreds of votes for the basic aluminum industry locals with thousands of members! And it isn't likely to get stronger, if history repeats itself, for Local 325's dues receipts reported in its 1968 and 1967 reports were only $5184 and $5951 -- small again, an average (at a $5 dues rate) of only 1113 members. Is this the local union you want to represent you? One with little or no voice in overall union policies? Ask yourself -- will the policies decided upon to govern this International Union be based on what 78 employees at Alloy Die Casting want, or on what the thousands of workers at the giant factories and mills want? Won't this union just naturally please its biggest dues payers first?

-- And what if the Union can't keep all the promises it has made and will make between now and the election, and can't deliver? Usually, a union in that fix asks you -- its members -- to help them deliver by going on strike, to force your Company to grant its demands. We're not predicting strikes as a necessary or likely consequence of unionization, and we would bargain in good faith to avoid them, of course. But strikes can happen in such situations. Would you be able to make the final decision to strike? Again, the answer is NO under the International Constitution. Article IX - STRIKES, Section 1 says that

> ". . . the International President shall be notified and his approval obtained before any strike is engaged in."

Does this sound like Local control -- by YOU? What about strike benefits? Again, the Local union doesn't decide whether you get anything, or how much you get for groceries, car and house payments, etc., while you're on strike. Section 3 of Article IX of the International Constitution says that the

> "International Executive Board is authorized to grant strike benefits to members and Local Unions from the funds of the Aluminum Workers International Union upon terms and conditions established by the International Executive Board."

They decide what, if anything, you get; not the Local Union representing you. And that bulletin

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claim that "You control your own strike fund" (read it again!) doesn't seem to match with the real situation described in the Union Constitution.

-- Article XI - General, Section 6, gives you another clue. It provides:

> "Membership in a Union shall not vest any member with any right, title or interest in or to the funds, property or other assets of the Local Union or of the International Union,. . . and each member hereby expressly waives any right, title or interest in or to the funds, property or other assets of the Local Union or the International Union."

So they want you to invest part of your wages in their organization, and then lose complete control of your money once it's into their hands!

-- Of course, your Local Union -- Local 325 -- would have its own By-Laws. But again, even those are SUBJECT TO INTERNATIONAL UNION CONTROL. International Constitution Article IX, Section 1 - Duties of Officers, provides in sub-section (7) that the International President "shall approve the By-Laws of all Local Unions. . .". And the International Constitution also sets forth "BY-LAWS FOR LOCAL UNIONS", telling the Locals what to put in their "local" By-Laws. Section 8 of those says:

> "No Local union's By-Laws shall be, or become, effective unless and until approved by the International President. Local Union By-Laws shall not conflict with, replace or nullify the Constitution laws, rules and regulations of the International Union, including interpretations thereof (by the International President)."

DOES THIS SOUND LIKE YOU RUN YOUR OWN UNION?

NOT TO ME!

And what do the By-Laws of this Local Union -- Aluminum Workers Local 325 -- say? They show still further control over your working lives by the Union, if it were voted in here.

Article V - INITIATION, requires each member to take the following oath:

> "I pledge my honor, . . . to keep as long as life remains. . ., to observe faithfully the Constitution and By-Laws of this Union; to comply with all the rules and regulations for the government thereof; not to divulge or make public any of the private proceedings of this Union; to perform faithfully all the duties assigned to me to the best of my ability and skill; to so conduct myself at all times so as not to bring reproach upon my Union, and at all times to bear true and faithful allegiance to the Aluminum Workers International Union, AFL-CIO".

So whether or not the union is accomplishing anything for you, and whether or not you approve of its actions, you are bound "as long as life remains" not to speak against it and to observe its Constitution and By-Laws. WOW!

And what of discipline against you if you don't do as they wish? Article XVII - Disciplinary Proceedings, covers that in great detail! Section 1 says that charges can be brought and penalties assessed against members of the Local Union for "any one or more of the following offenses", and that the basis for charges shall include "but shall not be limited to" those listed:

"(a) Violation of any provision of the Constitution of the International Union or the By-Laws of this Local Union or failure to perform duties or functions specified therein".

MEANING: This requires you to subject yourself to all of the control of your working lives listed above, plus any others there may be in the Constitution.

"(b) Refusal to follow lawful directions, orders or regulations of the International President, the International Executive Board, or the legally elected officers of this Local".

MEANING: Members do what they're told to do by Union bosses -- or else. When the Union says "Jump", members better just ask "How high?".

. . .

"(d) Engaging in any activity or course of conduct contrary or detrimental to the welfare or best interest of the International Union or this Local".

and

"(j) Engaging in or fomenting any acts or course of conduct which are inconsistent with the duties, obligations, and fealty of the members of a trade union and which violate sound trade union principles. . ."

and

"(k) Failure to exercise responsibility toward the International Union or the Local Union as an institution or engaging in conduct which would interfere with the International Union or Local Union's performance of its obligations".

MEANING: THE UNION BOSSES CAN TAKE DISCIPLINARY ACTION AGAINST YOU WHENEVER THEY PLEASE, BASED ON THESE VAGUE, CATCH-ALL PHRASES. A MEMBER HAS LITTLE OR NO DEFENSE AGAINST THIS LOOSE LANGUAGE.

"(m) Causing disruption or disturbance at a union meeting or union office, . . .".

and

"(n) Failure to obey order, directions or ruling of the presiding officer of any union meeting."

MEANING: If you have an opposite point of view, keep it to yourself?

PLUS: anything else they want to bring charges for under the clause "include but not limited to. . ."!

Now, what are the penalties for violation of any of these dire offenses? Section 5 of Article XVII tells us that:

> "Penalties for violations of this Constitution or By-Laws may include reprimand, fine, suspension from office or from membership rights for a stated period, suspension for right to run for office for a stated period, suspension from right to attend meetings, or if permitted to attend, from the right to speak or vote at meetings for a stated period, expulsion from membership or a combination of any of the foregoing."

That last one is a kicker. Expulsion from the union could cost you your job, since a prime objective of the AWIU is compulsory unionism -- the Union Shop -- where you must be a dues-paying member to keep your job. So if the union demands, and forces us to give, a union shop -- which we would bargain hard to avoid, so your freedom to join or not is preserved, then expulsion from the Union by the union bosses actually costs you your job! And what about the union handbill that claimed you "need not fear assessments . . . or other gimicks"? Fines, suspension, and expulsion sound pretty serious to me.

DO YOU WANT TO TURN THIS KIND OF CONTROL OVER YOUR WORKING LIVES TO A BUNCH OF OUTSIDERS? BE CAREFUL! DON'T let them tell you they never do such things. The official U. S. Government report filed by Local 325 for fiscal year 1969 shows

INCOME FROM "FEES, FINES, ASSESSMENTS, AND WORK PERMITS" of $1175 -- almost 1/4 of its total receipts of that year of $5643!

Sure, there's a procedure for notice of the charges, and for a trial to defend yourself; but that procedure (Article XVII, Section 2(b)) provides that "if the accused fails to appear,. . . the trial shall nevertheless proceed"!! Is this the Union's idea of due process and fair play? All they have to do is get you too scared to show up!!

And what about the procedure for voting on a strike? These Local Union By-Laws (Article XVIII) say that a strike can be authorized by a specified majority vote of those present and voting, not of all those affected by the strike. So if for some reason you don't attend that meeting, you can be ordered to strike even though you had no chance to vote on the issue! 12 guys could show up at that meeting and if 8 of them voted to strike, all 78 employees in the bargaining unit would be out on strike! Are you ready to turn your right to work over to somebody else?

How would complaints be handled? Now, you can talk your problems over with anybody in management, and get it explained or solved. Under a union contract, there would be a formal grievance procedure, with you telling your problem to the union, and the union telling it to the company, and the company answering to the union, and the union telling you what the company's answer is! Isn't it better to keep it the way it is now, on a warm, personal, first-name, direct basis? But there's more

to it than that. Now, you decide how far up the management ladder you want to take your problem. NOT SO UNDER LOCAL 325'S BY-LAWS. Article X, Section 6 says that:

> "The Executive Board shall . . . review all grievances subject to arbitration and reject or approve continuation of such grievances; subject to the approval of the International Union."

SO NOT ONLY DOES THE LOCAL UNION TELL YOU HOW FAR TO PURSUE YOUR GRIEVANCE -- including the power to tell you to forget about it by refusing to process it further -- BUT THE INTERNATIONAL UNION CAN TELL YOU, TOO. You won't control that anymore, either.

THESE ARE THE SNARES THAT THE UNION LAYS FOR YOU. THE ORGANIZERS AND PAID BUSINESS AGENTS DON'T MENTION THEM WHEN THEY ATTEMPT TO SWEET-TALK YOU INTO VOTING AWAY YOUR RIGHTS AS EMPLOYEES AND CITIZENS.

ONLY AFTER THE GATES OF UNIONISM SLAM SHUT BEHIND YOU, DOES THE IRON RULE OF UNION DOMINATION CLAMP DOWN ON YOU.

AND THEN IT'S TOO LATE.

Read the sections from the union's Constitution and By-Laws again. Ask yourself: "Do I want this union controlling my affairs and dictating my job security?"

And then ask yourself "Or do I want to continue Alloy Die Casting's way of peace, friendship, harmony and man-to-man dealings?"

As the election date approaches, keep in mind that promises are not guarantees. The union may try to sell you on a bill of goods and on the benefits it can obtain. Perhaps

it is a good bill of goods and perhaps not. Whether it can actually produce on these promises or not is another matter.

We are not saying that a union cannot be of any value whatsoever to a group of employees, or to you. Where the employer hasn't had the welfare of his employees in mind, and attended to their needs, a union can help. But where the Company has provided you with an excellent package of wages, benefits, and working conditions, as Alloy Die has, then you have to treat union membership as an <u>investment</u> and decide whether it's worth it or not: whether the benefits of unionization are less than the costs of unionization. Here at Alloy Die, we think they are. And we are confident that most of you agree.

No one will be treated differently, individually or collectively, based on the outcome of this election. But if you believe as I do, that the costs of unionization, in monetary costs and in terms of your personal work lives, <u>exceed</u> any benefits unionization <u>might</u> bring you, Vote NO on June 15. If you believe that this particular local union <u>cannot</u> EFFECTIVELY represent you, then tell them you don't want them to -- by voting NO on June 15.

THE DECISION IS YOURS.

Bill Holmes

HOW TO DEAL WITH THE UNION

By
JOHN R.
VAN de WATER

Highlights from WAM Seminar Address

One of the outstanding seminars at the WAM Show this year — one which is of intense interest to practically all needletrades manufacturers — was entitled: "THE UNION — What to do if you have them, what to do to keep from having them."

Because of its extreme importance to the industry — and because we felt it would be of enormous value to our readers — we are publishing, in this and in succeeding issues, excerpts from the lecture which was given by Dr. John Van de Water.

Dr. Van de Water, an attorney, has an outstanding background in government and industrial management-labor relations. He is Professor of Industrial Relations and Management at the graduate school of USC, a lecturer, author and prominent in labor-management arbitration and collective bargaining since 1943. — Editor's Note

What we do in situations where we have no unions—in building our relationships with employees, in our communication program, in developing understanding with employees —makes a tremendous difference, at times, in whether the union comes in or not.

I recall being called by one of my client companies some time ago, saying, "We're unionized, and the reason we are is that it was recommended by one of our garment manufacturers, in the field, who maintained that it is inevitable. They said, 'You are going to be unionized anyway. Why don't you go ahead and sign up now.' So we did. And now we need seven cutters to do the job of two cutters. We've had to go out of the business and become a jobber." *Isn't that a tragedy?*

You know, people assume that that kind of thing can happen to them. Or, at the same time, if they *are* unionized, very often people assume that with the union, this kind of a hardship need come to an employer. I can give you many examples where—with sound managerial leadership—this kind of negative result has not occurred.

When we talk about how to deal with union-organizing campaigns, this will be important for every man and woman in the room.

Of Prime Importance

It is vitally important for those of you who do have unions to listen to what we are going to talk about, because you still have some non-union areas. Further, I don't mean this as an anti-union bust, nor do I advise some illegal conduct, but rather on the basis of the freedom of your employees to choose for themselves whether they want to be unionized or not.

There is also the law and the conduct of strategy that legitimately governs the question of whether you feel that the union is harmful to your company and you would prefer to be non-union. *You have every right and your employees have every right to know what you can do about de-certification of unions.*

And today, we are not going to pull a single punch in dealing with each of these issues as realistically as possible. We are going to be talking about two primary fields today. One is, what do you do if there is a union-organizing campaign under way? Secondly, what do you do—and everyone here is involved in this — with your non-union people, to build a correct relationship of mutual trust, confidence and understanding, so they do not feel that they need a union to represent them?

So, if you are in a unionized situation and expect to continue that way, you can see that *you should build a relationship with your employees that calls for responsible unionism.*

We'll talk about each of these areas in turn.

Negotiations have been going on in the industry across the country. They re-opened possibility of strikes occurring in the Ladies Garment Workers groups among the dress manufacturers in January, with the Ladies Garment Workers Union in New Jersey apparel makers in February. The same is opening up for the ILGWU in New York in the coat and suit firms in May. There are problems coming up here in Los Angeles involving negotiations, but with the small number of manufacturers in this group that are actually unionized, I believe that you would like to spend more of your time, not on what you have to do and how to deal with these problems in negotiations, but rather in talking about these other areas of *building quality relationships in communications in union and non-union situations, for mutual trust and confidence with your employees, and how to avoid being unionized if you are not now unionized.*

I think it would be good to emphasize this point right at the outset: I am an attorney-at-law and I teach this field—and have for thirty years in universities. And I am *not* here to suggest that anyone ought to violate the law or interfere with the rights of their employees to make a free choice. As a matter of fact, let me say this: I believe that there are labor unions in this country that have done a lot of good for this nation. In the old coal towns, for example, where the people were virtually enslaved by the industry. Unions have done a lot of good in cleaning up some of these situations.

But equally, unions have done a lot of bad. You have enormously increased costs that have terribly hurt our country in terms of our competitive position today.

What I want to emphasize is: *Don't get a "class war" attitude that any guy in the union is necessarily an evil man.* Nor, among the unionists, should they have the attitude that any man who owns a company or is responsible to the owner is necessarily bad because he is a member of management.

I can tell you this in all honesty: In the last 130 union elections I've been involved in, where we had to go to an election—I couldn't even begin to count those situations where we got the union to withdraw after they had enough signups to have an election but they found that they couldn't win it. So they withdrew their elections or they couldn't get enough signups to have an election held—in the last 130 elections I've personally been involved in, the unions have lost the election in 125 of the cases. The only cases where they've won the election was where there was no more than two weeks or less to plan management's campaign.

So, the employees just didn't know the issues, because the company hadn't had a chance to clarify them.

Texas Challenge

Now we have a great challenge going on in Texas, right at the border. Massive strike activity is going on, being backed up by employees who cannot be proven to want the union. Where there were charges of illegal practices against the company, the company has won before the National Labor Relations Board, proving that they had not acted illegally. Yet, the union is going after the company now by nation-wide consumer boycotting, which can include picketing of outlets to get people to refuse to purchase those products and causing the retailer to say, "Well, we better do away with those products that can hurt us if we have them in our store."

On this point, we're also finding around the country consumer picketing going on and organizational picketing going on at the manufacturer's location. We've had several of those activities in Los Angeles recently.

Under the Labor Reform Law of 1959, it stipulates that unions do have a right to engage in organizational picketing for thirty days, unless you can demonstrate that they are engaged in threats of violence or actual violence, in which case you can stop that picketing very quickly. Otherwise, they have the right to picket for organizational purposes for thirty days.

That doesn't mean that you have to have the situation keep going this way.

For example, at Disneyland, where they put up an organizational picket line, we went out and counted 336 Disneyland customers turned away the first half hour, because a lot of people won't cross picket lines. We went right down to the NLRB, called for an election, called the Teamster's union and said "Don't you want to get involved in this battle, too?" They went in and had a fight trying to organize *their* people—who happened to be the office workers — and the office workers union that started the picketing was there.

We got both of them involved in this particular campaign, had an election held, and the vote was only 17% of Disney employees for the two unions combined, an overwhelming decision that they didn't want to be unionized. And then we got a certification of *no union*—and from that point on, *they had no right to engage in organizational picketing for even one minute.*

So, sometimes this organizational picketing can be overcome.

On the other hand, the unions—if they try this method of organizational picketing—knowing that they are limited to thirty days—wait for the peak season and try to put pressure on you by picketing outside your manufacturing locations, for the purpose of getting you to say, "Well, I guess I better go ahead and sign up, because it will be too costly if they interfered with our work processes."

You Are Protected

I want to suggest again that you have every right of protection to stop that activity, if there is interference with your work, and likewise, if they engage in secondary boycott activities where they go to your outlets and if you can prove that when they picket your retailers their motive is to get them not to handle your products. Picketing the retailer to cause him not to do business with you by causing a strike of his boys against him is a secondary boycott and can be stopped.

But, if you cannot prove at the retail outlet that the picketing is for the purpose of causing interference with work, and they claim it's only boycotting to reach the consumer to say, "Don't buy that company's garments," then you cannot stop that kind of picketing . . . according to a decision of the United States Supreme Court. This is directly contrary to the intent of the law as written in the Labor Reform Law, at least as interpreted by Bob Griffin (a member of the House which passed the Landrum-Griffin Act—the Labor Reform Law—and who is now a United States Senator from Michigan) . . . and also according to Landrum, who is a co-author of that statute, and also—I might say—according to Jack Kennedy, when he was a member of the Labor Committee in the United States Senate. Both Kennedy and Griffin talked before the Senate and said the purpose of the Labor Reform Law was to stop all picketing in retail outlets other than by the employees of the retail outlet in disputes they had with that retailer. But the Supreme Court has reversed this viewpoint, expressed by the members of Congress who were the leaders in organizing that law, causing Bob Griffin in the House to get up in a violent rage and say, "They've thrown away the American dictionary in interpreting the statute and what we meant." So, we have this terribly dangerous situation of retail picketing—which can have an enormous influence.

Union-Organizing Campaigns

Let's move on to the question of *union-organizing campaigns.* Those of you who have blue collar unions still have to be concerned about the possibility of attempts to unionize your white collar people. We now have organizing campaigns going on for engineers, for example. I have been involved in about five campaigns just in recent months involving engineers and scientists. So, the campaigns are hot and heavy in this area, too.

The first question is: *Why is it that in probably ninety-nine and forty-four hundredths per cent of the companies in this country, the management groups prefer — if at least by honest and lawful means they can do so—to avoid being unionized?*

Why do people want *not* to be unionized? Is there something immoral about this? Is it wrong for people to want not to have a union?

A lot of people think that because you prefer not to be unionized, you are against your employees and are trying to hurt them. *This is not at all necessarily true.* It *can* be. There *can* be employers that want to keep wages depressed way below normal competition. And that's what a union is for—to try to get people in line with normal wage rates. There is nothing illegal about this; it is a perfectly proper function of the union.

But, for the most part, compan-

les take the stand that says, "Look, our aim in getting good employees and in keeping good employees is to give them the going rate and to pay them benefits. We know we can't get good people and keep them unless we do. It makes common sense. And we don't feel we need a union here, because the union — if it came in — just might get in the wrong hands, if it's not in the wrong hands now."

All kinds of problems confront the company which has to deal with the union, such as: an irresponsible calling of a strike . . . or the many many hours and days involved in collective bargaining . . . having to turn our attention inwards to look at these problems rather than outward building the business . . . interference in employee activities.

Now think of the cost of attorneys in grievances and arbitration which you want to avoid if you possibly can. And I'm for you . . . I don't want to see anybody having to be involved in having a bunch of lawyers, if they can avoid having to. All these are costs the union caused, together with the dependency of the employees to look to the shop steward for their relationships, rather than to their supervisor. And all this does *not* build a healthy human-relations atmosphere.

The Law Says . . .

Now the law is typically in accord with the right of every one of you in management here, should you seek to avoid unionization. When the Wagner Act was written back in 1935, its aim was to encourage unionization. And the law says that it is a right of employees to engage in organizing, to get strike benefits, to hold conferences, to urge that others be unionized, and to engage in other activities for mutual aid. This is the law. It protects the right of the employee to unionize and engage in this conduct, non-violent in nature.

But the Taft-Hartley Act came along twelve years later, in 1947, and stated that that right has now been changed in this way: They *still* have the right to unionize, to collect strike funds, etc., but they equally have the right as employees *to refrain* from these activities . . . and that has become a legally protected right.

No longer does the law—by its statement—favor or encourage unionization. Rather, it encourages free choice by employees to unionize or not.

And when labor unions pass out literature outside your location, you will note that that literature only quotes the Wagner Act: they have a right to unionize.

Never have I seen a union quote that part that says that they also have a legal right to refuse to unionize, and that they have the protection of the Federal government if attempts are made to force them into unionization against their will. This isn't quoted by the labor unions.

GETTING OUT OF A UNION

Let us look at the possibility of certifying an end to a union . . . so that you who are now unionized may know that this will apply to you and your right of free speech.

Employees who are now unionized may go out of unionization! . . . Perfectly lawfully. This is their free choice!

And let me tell you the ways this can occur:

Perhaps it would be best to illustrate by example. We had a problem at the Astronautic Division of General Dynamics Corporation when they built the Atlas missile.

Negotiations started in July—with a union of 4500 employees. Most of you have a much smaller group of employees—though some have larger corporations. But, remember this: While I am presenting examples and you may say: "That's not my industry, that doesn't apply to me," the point I want to emphasize is this:

Case Histories

I wish to give you realistic examples so that you may see their true facts and know they apply to you no matter what your size. And they apply to you though you are not in the same industry as the example I am using.

At Astronautics, after bargaining from July 1 until the following February 1, the industrial vice-president of the corporation—who happened to be a student in a graduate class I was teaching at UCLA—asked:

"What can I do? We want to put in the pay increase we offered the union. The union doesn't want to go along with it. They want to cut the pay increase we're willing to give in order to get more paid vacation plans. We can't afford to accede to their demands because people seeking employment ask right away: What are your wage rates?

"We must keep competitive on this, and we're way ahead of others in terms of vacation plans. What should we do?"

Have you bargained in good faith, in the sense that you have listened to every argument of the union? Have you responded with your arguments to every argument they advance?

Time and again!

If you are hurting now because you can't give the pay increase because you are still bargaining and, therefore, can't keep your wages up —so that your people are going elsewhere—you are behind the times.

As soon as you have argued with the union open-mindedly, listening to any argument they raise and every argument they want to raise, at that point you have reached which the law calls "a legitimate impasse."

At that point the union can go on strike, and—at that point *you can put into effect the wage raise you offered last July.*

You can act on your own and say: "Look, we have reached an impasse. We are going to act unilaterally, since we have reached an impasse."

You have the right to do that!

And that's what happened at Astronautics.

We announced that we were giving the wage increase which had been offered the previous July 1. According to company policy, "it will be non-retroactive. Therefore, the employees of this company have lost one million two hundred and ten thousand dollars."

And the wage increase went into effect.

The union charged the company with an illegal practice: *failure to bargain in good faith.*

Class Warfare

The federal government through the National Labor Relations Board ruled in favor of the company. They had bargained in good faith, and—with a legitimate impasse — they could say: "Now we will act on our own."

Then the union started a real hate-building campaign against management. The firm went further than this. They called the employees together in groups—35 groups in 24 hours, to cover the 4,500 employees. They said: "This union is building a class war—with its attacks on management. We built Atlas missiles to protect our nation against the nations that represent the class-war ideology abroad, if necessary.. And here we have class war fomented right here."

What I am emphasizing is: there is a principle being violated in their hate-building. You go out after that.

You're firm against the things that would destroy by false techniques like this.

The president of the company pointed out: "Look what the union has done. It has put out a great big cartoon of a guillotine with the blade marked 'Management.' A rope is attached to the blade over the top of the scaffold being held by a man with the union's name across his chest. Another worker is tied down underneath the blade—being ready to be cut in half if the union lets go of the rope.

"That cartoon is saying something. I ask you to vote this union out. We have just gone to the National Labor Relations Board. We have filed a request for a de-certification election. We have proved to them that we have a good-faith doubt. Even though you people have been unionized now for twelve years and voted this union in by majority choice, you gave the proof of a good-faith doubt by slowing the check-off of union dues substantially down. Therefore, the employees seem to be disenchanted with the union."

Good-Faith Doubt

You must have evidence of this, if you are to have a good-faith doubt—before you can get a new election.

In the case I mentioned, the board said: You have demonstrated a good-faith doubt; you have a right to a new election.

The election was held, and the union was voted out by better than 70%. They have been non-union . . . . . .

I might say that the president of the local union broke down in tears when the union was voted down. He was a sincere man. Tearfully he stated that the company was going to "absolutely crucify us now." When the union came around three years later to attempt the re-unionization of the plant, one of the leaders of the opposition was that former union president. He said he didn't have any idea the company would do what they promised, that they would treat the workers fairly. In his words, "they proved to us that they kept us up with going rates, and we didn't have to worry about nine or ten months of negotiations to reach the point where we finally received an increase. They gave it to us at a normal time and kept us up with going rates. They treated us fairly, and I am surprised." So, he became a leader of the non-union movement.

There are several points I wish to stress.

Decertification

Number One: **DECERTIFICATION CAN OCCUR BY WHAT IS CALLED AN RM—REPRESENTATION MANAGEMENT PETITION.**

An RM petition is made to the National Relations Board.

Number Two: Let's take a case in point here . . . a well-known motors company. It was unionized, but there is no reason whatsoever for the union to have obtained a majority, according to the firm's rate of pay and the benefits given its employees.

Let me tell you why the union probably won.

When the unionization campaign was being waged, the company repeatedly told its employees during that campaign: "We want to let you know that no matter how the election comes out, we will never sign a union shop contract that means our people will have to pay dues or initiation fees to the union—regardless of whether we are unionized or not. Our company is paying better than union scale—we always have. We have bowling alleys for our employees; they can come to our beautiful cafeteria—and bring their families—and pay only 75 cents a piece for a full-course dinner. All these benefits—and more—we have given our employees—plus a beautiful location and the safest working conditions in the industry."

Why were they unionized? Probably *because the company so strongly emphasized that it would never sign a union contract.*

Since the employees were assured that they would never have to pay dues there, they said to themselves: "Well, why don't we sign up with the union? Maybe it will get us something else. It won't cost us anything."

Let us look at another case.

The company bargained with the union, as required after certification. (Certification is good for only one year). The company stood its ground. They did not offer one cent of pay increases. They did not offer more paid holiday . . . not anything.

Good-Faith Bargaining

And you wonder: *is that lawful?* Of course it is.

Good-faith bargaining simply means that you listen to the union's arguments with yours. That's all that good-faith bargaining is. You don't have to give one cent.

Consider the auto firm in Detroit that called up Jimmy Hoffa and said: "Look, I just found out that your boys are demanding a forty-cent per-hour increase in wages. Unless you, Mr. Hoffa, agree with us—and I'll show you the books to prove it—agree to a new contract calling for a twenty-cent-an-hour *reduction*, I am going on national TV and blast your union for bankrupting a company."

And Hoffa agreed to cut the wages 20 cents an hour based on proof.

Good-faith bargaining doesn't mean you have to give anything more. If you think you should, of course you should. We shouldn't hold back on employees; we should do what is right. We should treat our employees fairly. *But, good faith bargaining has nothing to do with saying you have to give pay increases or benefit increases.*

Your duty is simply to bargain in good faith by giving your arguments in response to theirs—and show you have an open mind to answer their arguments with yours. That's all the law requires.

In this instance, the company continued to tell the employees: "Look, folks, you unionized. And dealing with the union as you requested is costing us thousands of dollars to go ahead with negotiations. We will continue to negotiate. But, as we told you, we're paying over union scale, and we have nothing to offer with union help."

The union tried to call a strike to force the company to give what the union demanded. They got a four percent turnout for the strike meeting. After the year was up, the company then took the second method . . . because at this point we have now bargained for the full year. We have not reached an agreement. Our duty to bargain has ended, because we have a good-faith doubt that you still represent a majority. If the company did not have a good-faith doubt, they would have the duty to keep on bargaining ad nauseam.

If you have a good-faith doubt, you can refuse to bargain!

The union, that is, the auto workers union, charged the company with an illegal practice. The decision by the National Labor Relations Board was in favor of management. They had bargained in good faith for the full year required by certification. They had a reasonably good-faith doubt, when the union had only 4 percent show up for a strike meeting. The decision said the company can—if it wants to—rather than file a petition, just stop bargaining . . . and the union has to go out and get a new sign-up. If the union can get 30% or more to sign up, then they can get a new election. The union tried and couldn't even get a 30% sign-up.

They have been non-union since. But a couple of years later, they got a new election, but they lost that election because a substantial major-

ity of the workers voted not to unionize. That's the second method.

A Third Method

Now, let's take a look at *the third method*.

In this case, a manufacturer who had been a student of mine at UCLA in previous years and who headed the largest manufacturer of street sweepers in this country and in Europe, told his tale as follows:

"You know, we've been dealing with a machinist union for a long time. The other day two or three of my older employees came up to me and said: 'You know, Joe, the relationship with the firm was so satisfactory before the union, but now the people are screaming and pounding the table and building bitterness—and threatening all kinds of technical grievances rather than working things out with the bosses. We don't like this atmosphere—it's not like what it used to be. Do we have to keep the union here?' "

Joe wanted to know what to say.

What To Do!

You go onto the floor. Don't call them into your office, because that's a hearsay coercion by law, to talk about union matters in your office. Go out and talk to them on the floor. Have a couple of other members of management there—so that you have witnesses as to how you talked to them. (By the way, you who are unionized can always find some who feel this way. You are responding to their initiative, you are not taking the initiative. It is their initiative; they have to come to you.) Go out and talk to these people—the two or three people. Say something like this: 'Fellows, I want you to know how grateful I am to you that you feel the way you do about having a union here, that you trust us and feel we play fair. I'm deeply grateful for this. Now I want to tell you this: It's none of our business whatsoever whether you have a union here or not. We have no right by law to have any part in this. If you don't want the union, here is what we suggest you do:

Go down to the National Labor Relations Board. Here's their address on South Broadway in Los Angeles. Tell the NLRB that you want to find out what the process is to de-certify a union. Do not tell the personnel at the Board what company you work for. Don't tell them what union is involved — because even though it is a breach of good faith for them to disclose, somebody might talk.

Keep it secret—as to what you are planning to do.

Now, some might feel that I am suggesting devious means—conspiracy. I'm talking about *strict obedience to law—about giving employees a right to make a choice on whether they want to be unionized or not. There's nothing illegal or immoral about what I am suggesting.*

Don't tell them where you came from . . . simply so they won't have the union to go after you.

When you go down to the Board, the Board will ask you: *Did the company suggest you come down here?"*

You tell them: *"Yes."*

Then, they will ask:

"Did the company suggest you get rid of the union?"

You tell them: *absolutely not. The company had nothing to do with it. We went to the company and told them we didn't want the union. The union told us 'It's none of our business. We have no right to talk to you about this. If you want to talk to people who handle problems like this, speak to the federal government."*

And then they will tell you what you can do.

In the case we spoke about previously, the complaining workers were told: "Just get a petition made up, get it signed by at least 30% of the employees in the production and maintenance units. Then we'll hold a new election. We'll put on that ballot: no union; the machinist union; and a new association this group would like to have, called the Wayne Employees Association."

The complaining workers had wanted to have a new association, though they didn't have to. This new group won. After these years, I think these people now pay 75 cents a month dues. This goes into the recreation program. And the bargaining with the union now takes about 20 minutes a year.

The union leader said to the president of the firm: "If you are ever dishonest with us, all we have to do is re-affirm with one of the big unions and strike the hell out of you."

And the boss replied: "Why sure, if I don't treat you fairly, that's what I deserve. What are unions for?"

When You May Respond

For those of you who have unions, keep this in mind: *you cannot initiate getting your employees to kick a union out . . . but you can respond to their instituting such action.*

You can initiate refusal to bargain if you have a good-faith doubt that a majority wants the union after the certification year is up. And the certification is good for only the first year.

Certainly, if you have a good-faith doubt, you have the right to file a petition, but it has to be at a time between 90 days and 60 days before the expiration of the contract . . . because you have to bargain without this interference during the 60 day period before the contract expires. If you have not reached an agreement and the contract has expired, as in the case of Astronautics, you can go to the Board after the contract expires—with a good-faith doubt—and set a new election.

Between 90 days and 60 days before the contract expires, you can file the petition for a new election.

If you haven't filed the petition before the 60 days, then that 60-day period is perfected for the purpose of bargaining without NLRB involvement other than to require bargaining in good faith.

But, if you haven't reached an agreement, then you can go ahead under the conditions mentioned before.

Now, let us proceed to a few other points.

THE BASIC RIGHTS OF FREE SPEECH

During the union organizing drive and before, you in management have every legal right to talk to your employees, in written, printed, graphic, oral form. You can say anything you want to during the union campaign—BUT the limitations are these:

You cannot threaten harm or promise a benefit.

So often you get from groups like the National Association of Manufacturers a document of what NOT to do that's illegal. It goes on for several pages—about 75 things not to do. People become anxious — so fearful of saying something, afraid they might violate a law.

Four Tips

Let me tell you how to solve this problem with your people, to train them on what to do and what not to do in a union campaign.

REMEMBER THESE FOUR TIPS:

Don't do any of the following four tips—which violate the law—and then you'll find you'll be completely free to do anything you wish to do . . . without fear:

1. No threat to treat people worse if they take a stand in favor of the union or if they vote for the union.

It would be illegal to call your employees together and say. "I understand you are talking about a union here. Don't you realize we could shut this plant down any time we wanted to and farm the work out?"

Sure, you have the right to shut a plant down and farm the work out . . . but you can't threaten to do so, to influence whether or not to vote

for a union. That's illegal.

You can't threaten people to do them worse if they vote for the union.

2. No interrogation, no asking questions about whether they are in favor of the union or not. "How are you fellows going to vote in the union election?"—you can't ask them that question.

Nor can you ask them: "How many went to the union organizing meeting last night? Who was there?"

Also, you can't have a supervisor sit across the street in his car and take down the license numbers of those at the meeting. That's illegal.

Don't question your people whether they're for or against the union, or question them about what the union is doing in its organizing campaign.

3. No promises to treat people better if they vote against the union.

For example it would be illegal for you to call your employees together in the cutting room and say: "I understand there's a union campaign going on, fellows and gals. By the way, we are thinking about giving a 10-cent across-the-board wage increase. We are waiting to see how the election comes out." That's illegal—you can't do that.

4. No spying.

As I told you previously, you can't take down license numbers. You can't have espionage agents working for you.

I've told you the four things not to do . . . so as not to violate the law.

In 30 years of working in this field, the NLRB has never found a client of mine in violation of the law —not once. We have been charged with it—sure. But we won every one of them.

I have told you the four steps—what you cannot do. Now let me tell you *what you can do.*

And some of you—if you have false teeth—are going to drop your teeth—in excitement—when I tell you. You have no idea what your legal rights are!!!

WHAT YOUR RIGHTS ARE . . .

You cannot threaten your employees with illegal conduct — by threatening to cut their pay or fire them if they join the union. *BUT, you can explain what the cost of a labor union could be to them!*

Tell them what the initiation fees are. Tell them what their dues are per month. Tell them that the UAW in their last report to the federal government — out of the workers' pay — paid to the union for strike funds spent more than 141 million dollars in strike funds out of the workers' pockets in one year . . . at the cost of the workers.

Now, this will surprise you: you probably knew that you could explain all the above on the cost of the union . . . and also the costs of picketing and the costs of activities that are the bases of getting wage increases, etc. You can say all this . . . But, you must explain that you are talking about what can happen—not something that is going to automatically happen. You can only explain these as possibilities.

Also, this:

How many of you knew that you could call together your employees and tell them the following:

"Fellows and ladies, I want to let you know—as a matter of company policy—that even though we would bargain in good faith with the union, if it were voted in, if after good-faith bargaining we could not reach an agreement — and the union called you out on strike — we would immediately hire replacements for every striker. And you people would be out of a job."

Almost nobody knows you can say this.

Closing Down

It is illegal to threaten to close down if you become unionized, but you can explain that in the event we are unionized and we bargain in good faith and we can't reach an agreement with the union and if this was it: we couldn't operate as during a situation when they called a strike, then *for economic reasons* we may be forced to shut down and close this operation completely!

You see, one way you are threatening them if they vote for a union, you'll close down the place. The other situation, you've just been explaining your legal rights for economic reasons . . . not because of "union vs. no union." But for economic reasons, you have the right to move to a new location.

One thing I find is that you can almost always tell the employees what you want to . . . *you just have to find the right way to say it.*

Another point on explaining the limitations of the law:

You can tell them—

1. It is illegal for a union to threaten discrimination against any employee because he refuses to join a union.

2. It is illegal for a union to force the non-union employees not to walk through a picket line. Police protection will get you through that picket line.

3. If they do call a strike against us and we can't get enough of our non-union people to come through the picket line to work, we will advertise — we promise you this — and we will advertise to bring in other workers to replace the strikers so we can keep operating. They're not going to put us out of business.

Secondary Boycott

4. If we can't get enough others to operate this way, we're going to farm work out to other companies and let them carry out the work for us. In this case, by the way — because they become an ally then in farmed-out work — the union could throw a picket line in front of the place to try to induce the employees not to handle your products. That's lawful. That's a secondary boycott which is lawful, because it's farmed-out work and they're your allies.

But—you farm out work to other shops that are non-union, where the picketing wouldn't result in work stoppage.

Another point . . . you're getting supplies from this certain supplier and you're selling products to a certain company. If they were to picket here to induce these people to refuse to work supplying your goods or to get the employees to refuse to work for this retailer to sell your goods, we can nick them under Section 8B4D and under Section 10K for an injunction to stop that secondary boycotting. We can sue them under Section 303 of the statutes for damages for all the costs they made to us in situations like this.

Miscellaneous Points

To deviate and make a few more pertinent points:

Even though you cannot engage in spying on the union, you can keep people under surveillance to see that they do not violate company rules.

Re-Solicitation

Let me tell you about the strongest no-solicitation rules (backed up by Congress and the U.S. Supreme Court) that will be allowed:

This is the wording—as far as you can go by law, though you do not have to go this far—

It is a violation of company rules for any individual working for this company to engage in solicitation for any private purpose whatsoever, by all means during working time . . . or by distribution of literature in working areas during working and non-working time.

This applies to what they can't do. However, the union would have the legal right to do many things. You tell your workers what they can't do. Don't tell them what the union can do . . . let the union do that.

Let the union be the one to tell them what can be done by the union. The union could tell them: "Look, you have the right on company property during rest breaks, during lunch periods, walking back and forth to their jobs when they first come and when they leave . . . you have the right to engage in all solicitations and you have the right to pass out literature in non-working areas when the people are not working during their breaks, — because that's a legally-protected right. And if you tried to stop these activities and if you won an election—or if you put in a rule that said "No solicitation for any private purpose whatsoever on company property at any time," then if you won the election—the Board would void the election and order a new one.

WHAT CAN YOU — WITH YOUR UNIONIZED AND NON-UNIONIZED EMPLOYEES — DO WITH PROPER METHODS TO BUILD A RELATIONSHIP OF MUTUAL TRUST AND CONFIDENCE . . . to overcome what otherwise could be militant unionism and union power to shut down your plant?

(We could not possibly cover this subject in one morning. For those who are interested, we do have cassette programming on all subjects covered, including this one . . . procedures to enormously improve competency of management operation. All are available in cassettes.)

Building Bridges

I wish to stress, though, a few points on how to build a satisfactory relationship.

In this field, I find that *one of our greatest challenges is to help build a right relationship* and sometimes a fair one—with understanding.

Let me tell you of an example. In the U.S., we had a plant of 25,000 employees where the union was totally controlled by 19 extremely well-trained ideologists whose aim was to build subversiveness, and build hate between black and white, and between Chicano and white. The danger was that they would tear the corporation apart. As a matter of fact, the union lawyer I dealt with was the attorney who represented the Comintern at the Reichstag trials in Berlin. Their union's recording secretary-treasurer was the wife of the Los Angeles County Communist party chief. We had a situation where the best trained people you can imagine were spreading hate. We established a program there to build human relationships, and as a result of this new program — 15 months later — every single one of those 19 people who had controlled that union walked in and voluntarily quit . . . because they became totally powerless to build subversiveness and hatred.

Now, this is the sort of thing you should be doing even when you don't have that kind of "pretty" situation. Even if you have no picket lines threatened, you should build positive relationships.

Number one point to keep in mind is this:

We always will have problems in communicating.

Suppose, for instance, you are the supervisor, and you wish to get an idea that's in *your* mind into the mind of one of your subordinates. Suppose you want to get a picture of a rosy, ripe apple from your mind into this person's mind . . . an apple that spits back when you bite it — from your mind into this person's mind.

The process you have to go through is this: You have to take that image and put it to work. So—you have to pass it through your biases, prejudices, mental limitations, training and experience — and it comes out of your mouth as a molecular servant that impedes you when the other fellow is given the message. At that time, he has to decode it through *his* biases, prejudices, mental limitations, training and experience . . . and it comes to his mind as an *orange*.

Communication

Even if you are a perfect "communicator, you cannot communicate perfectly — because you cannot climb into the other man's skull and re-arrange the furniture in his mind.

Remember this: *my language may not be the same as yours.*

(Mr. Van de Water then told of an example of a large firm. Bloody warfare continued for three and a half years — union vs. company. Then, at a meeting called to try to discover why so much trouble occurred, it was brought out that the employees felt the firm did not tell the truth to its workers. Tracing back, they learned that an executive—in speaking to the employees when a crisis had appeared — had said to them: "Not one of you guys will lose his job with the company." He had meant that all would be employed and they were. But, to the rock crusher—for example—"no one losing his job" meant that he would keep his job as a rock crusher, the job he had held since high school days—not just *work* in the firm. Nobody lost his job, but *many workers felt* they had lost their jobs — *all through a misunderstanding in communication.* As a company head put it: ". . . 3½ years later . . . a misunderstanding of a three-letter word . . . and a $4,000,000.00 loss."

(In summarizing this example, Mr. Van de Water stated: "So, folks, what we are talking about is this: We *cannot* communicate perfectly.")

We must find a way to open up communications . . . one of the best ways I know is this:

Interviewing

We find the best service we can give to your company is *to do some interviewing — spot interviewing — with different individual employees, different supervisors with different functions. We want to find out what's on their minds—what suggestions they have to improve the organization and the work-flow* and authority relationships and delegating authority and getting feedback and controls and better discipline and fair treatment to people. What suggestions do they have? We promise we won't quote anyone. If they want to voice a grudge—fine. But what we're looking for are suggestions for improvement.

The ideas are passed on to top management . . . information — at low cost — given to top management and discussed.

Even in a matter of a few days of interviewing, you can get help — enormously—in knowing what your workers have on their minds.

We do this in unionized and non-unionized plants, to delve into the thinking of the employees. This is not just an attitude survey — where they check off things — but a chance for the workers to do their best and tell what's on their minds.

What I am suggesting is:

Improve your individual communication . . . but, likewise, find the ways to get the information to top management, without putting anyone on the spot.

You go ahead . . . and improve managerial confidence . . . and then give the training in listening skills, communication skills, leadership, motivation — all fields, including management by objectives and basic

management procedures that help the company do a better job.

Supervisor

Some urgent points on what to expect from a good supervisor:

1. The supervisor in the highly selective department generally is employee-centered apart from being job-centered. Basically, he gets the job done.

2. He has high enthusiasm for the job.

3. He has obviously a belief in the value of the job the department is doing.

4. A high-performance goal.

5. A lack of a feeling that the goals are unreasonable.

6. A lack of a personality conflict between him and the boss.

7. —and most important: The use of general rather than close supervision.

That doesn't mean that when you are training a person, you don't take time to train a person. Of course you do. Take time to train him — then stop breathing down his neck.

After he is trained, take your claws off him. Let him think creatively, control his own ideas on how to do better for himself and have his own thought control.

Next—8. The highly-productive supervisor is deeply—as seen by his subordinates — and genuinely concerned for the workers' welfare.

Next—9. Interest in the workers' personal problems without intruding on their sense of privacy. Gimmicks won't work — you need genuine concern.

Next—10. Taking time to train people on a new job . . . including leadership in training.

Next—11. The educational above the punitive use of mistakes.

In addition to the 11 human qualities I have just enumerated for you, I wish to add two more:

Organization skill.

Technical competence.

Now, here's my final point:

How do you build a motivational atmosphere so that people are motivated from within to want to work with you to accomplish the enterprise's objectives . . . and to want to stand up to the union if it tries to undercut the company's activities and make demands that are unreasonable?

How do you build a motivational atmosphere?

Here are the results of research.

1. Ask yourself these questions:

Can the people who work for you say honestly that to the fullest extent that the job could permit, on that job my boss allows me to develop my full potential?

If I prove myself, will he delegate to me jobs he used to keep back? He looks to me for new ideas. If I suggest something, he doesn't say I am stupid. He says: "That's fine, Joe. I'm glad you're creative. Let's talk about it." And he listens to me.

2. As your people fill out their personal life goals . . . *what do they want out of life? What are their goals?*

As regards the company, what would they like to become in the company?

Some would like to become supervisors; others would not like to become supervisors.

Find out from your people what they want. Be sure the people understand their goals, why they are working for this company. They understand clearly, that they are working and earning money — working to provide for their families, for their families' safety, for vacations — for all these things. They know what their personal life goals are. But, do they fully understand *your organizational goals?* Have you included them in thinking through what your goals should be?

3. Set your goals with your employees involved. Involve them in thinking with you.

4. Do they know—or have reason to know, because of your practice—that their chance will best be served during the time they are working for you — to accomplish their personal life goals . . . by pay increases, promotion, recognition, bigger jobs? Do they know that all these intrinsic and extrinsic rewards are given—based on superior performance?

They really must know. Does the squeaky wheel get the grease? Does the person with the glib lip or with a good personality get the reward — or the fellow who gets the results for you?

5. Do you have a management system — a performance evaluation method based on who cuts the mustard?

As part of this system, do you have workers themselves take a part in evaluating themselves?

They are not thus making the decision — the boss makes the decision — but listen to them. Of course, we want the boss to make the final decision, though. I do hope in your company you have the golden rule: he who has the gold, rules.

But, be certain you don't downgrade *Performance Evaluation!*

Conclusion

As a final note, I wish to relate to you a story told to me by a friend who had just returned from England. While visiting an ancient graveyard, this party was intrigued by a particular gravestone, dated 1699, where the deceased had evidently written his own epitaph. It read

"*As you are now, so once was I.*
As I am now, you soon shall be.
So, may I say, if there's a Lord,
'Prepare for death and follow me.'"

But careful examination revealed that at the bottom of the epitaph, some unknown had deeply scratched these two lines:

"*To follow you I'm not content,*
Until I know which way you went."

So — it is important — whether we are unionized or not unionized — *it is important which way we go.* Building relationships will determine, frequently, what happens between the union and the company. *What we give is the basis of what we get.*

Mr. DONAHUE. There are several points in that article which Mr. Van de Water made that I would like to note.

First, at every juncture in the article, Mr. Van de Water stresses that union organization is an evil and should be fought. Where it has already occurred, it can be undone.

Aside from the coal fields of this country, he apparently could not think of a single occasion in which an exercise of the right to organize had served the public interest.

Collective bargaining is viewed by him in his words as follows:

> All kinds of problems confront the company which has to deal with the union, such as an irresponsible calling of a strike or the many, many hours and days involved in collective bargaining, having to turn our attention inward to look at these problems, rather than outward building the business, and interference in employee activities.
>
> Now think of the cost of attorneys in grievances and arbitration which you want to avoid if you possibly can. I am for you. I do not want to see anybody having to be involved in having a bunch of lawyers if they can avoid having to.
>
> All these are costs the union caused, together with the dependency of the employees to look to the shop stewards for their relationships, rather than to their supervisor. And all this does not build a healthy human relations atmosphere.

Further on, a situation is described in the article in which an affiliated union had been decertified and a company union had replaced it. It is described as an ideal situation.

Mr. Van de Water says:

> The complaining workers had wanted to have a new association, though they did not have to. This new group won.
>
> After these years, I think these people now pay 75 cents a month dues. This goes into the recreation program, and the bargaining with the union now takes about 20 minutes a year.

I believe that.

There is no recognition by Mr. Van de Water that that type of cozy relationship, brought about by employer control of labor organizations, is the thing that section 8(a)(2) was intended to prohibit. Indeed, section 8(a)(2) is not part of Mr. Van de Water's version of the NLRA, as far as we could discern that from reading this article.

Representing an employer faced with the union organizational picketing, he says that he:

> Went right down to the NLRB, called for an election, called the Teamsters Union and said: "Don't you want to get involved in this battle too."

They went in and had a fight trying to organize their people who happened to be the office workers. The office workers' union that started the picketing was there.

Further on, Mr. Van de Water defined good faith bargaining for his audience. He said:

> Let us look at another case. The company bargained with the union as required after certification. Certification is good for only one year. The company stood its ground. They did not offer one cent for pay increases. They did not offer more paid holidays--not anything. And you wonder: Is that lawful? Of course it is.
>
> Good faith bargaining simply means that you listen to the union's arguments with yours. That is all that good faith bargaining is. You don't have to give one cent. Your duty is simply to bargain in good faith, giving your arguments in response to theirs and show that you have an open mind to answer their arguments with yours. That is all the law requires.

You will note, Mr. Chairman, that there is not a hint in those remarks that good faith bargaining really requires negotiation

based on a sincere desire to reach a mutually acceptable agreement.

Further, Mr. Van de Water offers some helpful hints on how to get around the law.

The act does not permit employers to instigate or support employee decertification efforts.

It is, therefore, suggested in the article that management should seize on an employee complaint about union representation. Mr. Van de Water describes what to do.

You go on to the floor. Don't call them into your office, because that is a hearsay coercion by law to talk about union matters in your office. Go out and talk to them on the floor. Have a couple of other members of management there so that you have witnesses as to how you talked to them.

Parenthetically he notes:

By the way, you who are unionized can always find some who feel this way. You are responding to their initiative. You are not taking the initiative. It is their initiative. They have to come to you.

Go out and talk to these people—the two or three people. Say something like this: "Fellows, I want you to know how grateful I am to you that you feel the way you do about having the union here; that you trust us and feel we play fair. I am deeply grateful for this. Now I want to tell you this. It is none of our business whatsoever whether you have a union here or not. We have no right by law to have any part in this. If you don't want the union here, here is what we suggest you do:

"Go down to the National Labor Relations Board. Here is their address on South Broadway in Los Angeles. Tell the NLRB that you want to find out what the process is to decertify a union. Do not tell the personnel at the board what company you work for. Don't tell them what union is involved, because even though it is a breach of good faith for them to disclose, somebody might talk."

I would hope that if Mr. Van de Water is confirmed as Chairman, he improves his attitude toward the members of the Board.

Further on in the article, Mr. Chairman, there is reference also to the inconvenience that the act prohibits employer threats.

That, according to Mr. Van de Water, however, is a matter of small significance.

He says:

You cannot threaten your employees with illegal conduct by threatening to cut their pay or fire them if they join the union, but you can explain what the cost of a labor union could be to them.

One thing I find is that you can almost always tell the employees what you want to. You just have to find the right way to say it.

Later, the following handy examples are provided:

Fellows and ladies, I want to let you know as a matter of company policy that even though we would bargain in good faith with the union, if it were voted in, if after good-faith bargaining we could not reach an agreement and the union called you out on strike, we would immediately hire replacements for strikers. And you people would be out of a job.

Mr. Van de Water continued:

Almost nobody knows that you can say this.

It is illegal to threaten to close down if you become unionized, but you can explain that in the event we are unionized and we bargain in good faith and we can't reach an agreement with the union and if this was it, we couldn't operate as during a situation when they called a strike. Then for economic reasons we may be forced to shut down and close this operation completely.

You see. One way you are threatening them if they vote for a union. You will close down the place. In the other situation, you have just been explaining your legal rights for economic reasons and not because of union versus no union. For economic reasons, you have the right to move to a new location.

The sum, Mr. Chairman, of Mr. Van de Water's approach is captured in the following boast in this same article:

> In the last 130 union elections I have been involved in where we had to go to an election—I could not even begin to count those situations where we got the union to withdraw after they had enough sign-ups to have an election but they found that they couldn't win it so they withdrew their elections or they couldn't get enough sign-ups to have an election held—in the last 130 elections I have personally been involved in, the unions have lost the election in 125 of the cases. The only cases where they have won the election were where there was no more than 2 weeks or less to plan management's campaign.

So spoke Mr. Van de Water in the article entitled, "How to Deal With the Union."

No one, and certainly not an employer nor a management consultant, is required to accept Congress judgment embodied in the National Labor Relations Act and carried forward in the Labor and Management Relations Act. No one is required to accept that judgment that the exercise by workers of the right to organize is a social good and not a threat to the Nation.

We submit, Mr. Chairman, that a man who views it as his mission to thwart organization at every turn is not fit to administer those laws.

Thank you.

[The prepared statement of Mr. Donahue follows:]

STATEMENT BY THOMAS R. DONAHUE, SECRETARY-TREASURER, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, BEFORE THE SENATE LABOR AND HUMAN RESOURCES COMMITTEE ON THE NOMINATION OF JOHN R. VAN DE WATER AS CHAIRMAN OF THE NATIONAL LABOR RELATIONS BOARD

SEPTEMBER 30, 1981

My name is Thomas R. Donahue. I am the Secretary-Treasurer of the American Federation of Labor and Congress of Industrial Organizations. My purpose today is to urge that the Senate reject the nomination of John R. Van de Water to be Chairman of the National Labor Relations Board.

I have chosen to take as my text three statements made by the Chairman of this Committee during the debates on Board nominations in the last Congress.

First, during the August 5, 1980 floor debate on the nomination of Don A. Zimmerman to be a Board Member, Senator Hatch said:

> Never before, in the agency's history, has there been a more compelling need to have a Board Member who is perceived as objective and, most important, independent.

Second, during the August 22, 1980 hearing on the nomination of John C. Truesdale for a full term as a Board Member, Senator Hatch said:

> More than any other agency or arm of the Federal Government, the responsibility inherent in the purpose of the National Labor Relations Board can be symbolized in a scale. Its purpose is certainly less activist than judicial. *** [The Board] is a national policymaking institution that can make the differenee whether or not we have labor-management chaos, or a just management-labor relations.

Third, and finally, during the September 5, 1980 hearing on John Truesdale's nomination, Senator Hatch and Robert Thompson, representing the Chamber of Commerce of the United States, engaged in the following colloquy:

> **MR. THOMPSON:** We were also alarmed at the manner in which these nominations have been coming in the last year. There has been a very sharp departure that should be noted, I think, from the practices of previous years, at least, say, the last 10 years, and that is there has been an effort in the previous years to find some kind of a consensus among labor and management as to sensitive appointments like Labor Board appointments.
>
> **SENATOR HATCH:** You are making a pretty serious accusation. You are saying that in prior administrations there was some effort made by whoever was President, whether it was a Republican or Democrat, to try to accommodate the interest of both business and labor, and that there at least was some effort together to have people who are accessible to both on the Board.

MR. THOMPSON: Not only was an effort made, but it was made successfully.

To refresh the recollection of those who may have forgotten, on the basis of these tests of fitness to serve, no action was taken on Mr. Truesdale's nomination and the vote on Mr. Zimmerman's confirmation was 68 in favor, 28 opposed, including in the latter group Senators Hatch, Armstrong, Hayakawa and Humphrey.

To complete this background, I note also that Mr. Truesdale's nomination was made after extensive consultations by President Carter's Administration with both management and labor, that he had served the Board for 23 years, including five as the Executive Secretary, and worked for the National Academy of Sciences, that while the question of whether he had shown "balance" in his three years as a Board Member was extensively debated, it is a fact that in the cases that gave the Board difficulty (those in which its members split on the proper result) he voted for the position favorable to labor 55% of the time and against that position 45% of the time, and that he has never spent a moment on the payroll of any labor organization.

With regard to Mr. Zimmerman, it should be noted that again there were extensive Administration consultations with management and labor, that he spent his professional career with the Office of the Secretary of Defense, Office of Management and Budget, the Trustee in Bankruptcy of the Penn Central, and then as a legislative assistant to that distinguished Republican former Senator Jacob Javits, and as counsel to the Republican members of this Committee, and that he too has never spent a moment on the payroll of any labor organization.

The labor movement agrees that in making nominations to the NLRB, which is indeed a "judicial" body "that can make the difference whether or not we have labor-management chaos or a just labor-management relations" the Administration should attempt to "find some kind of consensus" and that there is a "compelling need to have a Board member who is perceived as objective and, most important, independent." And, we submit, that since the Senate, during the last Congress applied those criteria and concluded that Mr. Truesdale's nomination should not be confirmed and that Mr. Zimmerman's confirmation was subject to serious question, there can be no doubt that Mr. Van de Water should not have been nominated and cannot be confirmed.

In the first place, while as is usual with any pending government appointment, there was some "gossiping about" concerning several potential nominees for

NLRB Chairman, so far as I am aware organized labor's views on Mr. Van de Water were never sought. Indeed, I do not know of a single chief officer of a single AFL-CIO national union who had heard of Mr. Van de Water prior to the day his nomination was announced. So much for the effort to find consensus between management and labor.

Of far greater moment, the AFL-CIO's consistent position, as most recently stated by George Meany in his May 8, 1979 testimony to this Committee opposing the nomination of Edward Miller to be Board Chairman, has been and remains:

> The late Senator Taft, in his Committee Report on what became the Taft-Hartley Act, stated:
>
> "*** [I]t is the belief of the Committee that Congress intended the Board to function like a court *** the Board's function is largely a judicial one ***" (Senate Rept. No. 105, 80th Congress, 1st Session, p. 9).
>
> Morever, the Board has a specialized jurisdiction: it handles only matters involving employers, or unions, or both. Any one at all may file unfair labor practice charges, but charges may be filed only against employers or unions. In other words, only employers and unions can be respondents — i.e., defendants — in unfair labor practice cases, and more often than not unions and employers are on opposite sides in unfair labor practice cases.
>
> The same is true in representation proceedings. They always involve employers and unions, and employers and unions are usually on opposite sides.
>
> Moreover, labor cases are often sharply controverted, with emotions running high on both sides. The loser is all too apt to charge the Board with bias and prejudice. Indeed, the Board has suffered from such charges throughout its history. That cannot be entirely prevented, but precautions can be taken not to appoint to the Board persons who by reason of their backgrounds are peculiarly open to such charges. ***
>
> It seems apparent to us, therefore, that great care should be used in selecting members of the Labor Board to avoid persons who are so identified with either unions or employers that they may not be able to hold the balance even between them. We believe, specifically, that no one should be appointed to the Board from the ranks of labor or management, ***. [I]ts members are all supposed to represent the general public, and not the special viewpoints of labor or management. It is desirable to have labor specialists on the Board, and many have served, but not at the expense of destroying its impartial character.

We have followed the counsel that a decent respect for the opinion of the other parties regulated by the NLRB calls for the appointment of individuals whose

careers have been devoted to bringing management and labor together, not of individuals who have been employed by one side or the other to advance that side's interest or who intend to seek such employment when they leave the Board. We see that principle as the proper application in this context of the axiom that justice not only be done but that it appear to be done.

The labor movement has had some influence with certain Administrations, but we have not pressed for the appointment of a union lawyer or official to the NLRB and there has never in the Board's 45 year history been such an appointment. Management, to be sure, has not shown similar self-restraint. The result has been, to cite the recent instances, the appointments of Chairman Edward Miller, General Counsel Peter Nash, and Board Member Peter Walther — men who have interrupted careers as employer lawyers for a short stint at the NLRB. The spectacle Mr. Miller and Mr. Nash trading on their Board credentials as they lobbied on behalf of their management clients against the labor law reform bill is perhaps the clearest example of how this practice of using Board appointments to further management's private advantage undermines the Board's integrity.

Be that as it may, so far as we are aware, the employer agents previously loaned to the public service had engaged in the relatively removed role of a legal counsel handling litigation. Mr. Van de Water has played a far more active and partisan role on the management side.

The records of the AFL-CIO Los Angeles-Orange County Organizing Committee for 1963-1972 indicate that, at least during that period Van de Water Associates served as management consultants to numerous employers who actively opposed their employees' attempts to organize. The role of such consultants, most narrowly conceived, is to denigrate unions and collective bargaining and to play on the insecurity bred by what the Congress and the Supreme Court have recognized is the central aspect of "the labor relations setting *** [—] the economic dependence of the employees on their employers ***." (NLRB v. Gissell Packing Co., 395 U.S. 575, 617).

A majority of the Labor-Management Relations Subcommittee of the House of Representatives in a 1981 Report on "Pressures in Today's Workplace" (at pp. 25-26) concluded:

> Evidence presented at the hearings suggested there is a growing trend on the part of management to "contract out" for specialists to handle certain aspects of labor-management relations. These specialists or consultants are entrusted with the task of keeping a company "union free". They are most often hired for a fixed period of time corresponding to a union organizing campaign.
> * * *
>
> • • •
>
> Perhaps the most distressing aspect of the emergent consultant industry is the perspective it brings to labor-management relations. It is a philosophy of labor-management relations which is first and foremost anti-union. The defeat of unions is an end in and of itself and in many instances consultants come dangerously close to justifying whatever means are necessary to accomplish that end. The consultants promote a perspective of labor-management relations which exalts the short-run over the long-run, presuming that workers will vote against a union if management exercises the correct combination of manipulation, persuasion and control during the relatively brief duration of an organizing campaign.

The issue here is not whether such activities are, as we believe they are, offensive, small-minded and mean-spirited. It is not even whether such activities are, as we believe they are, inconsistent with the NLRA's "policy" stated in §1 of the Act:

> [to] encourag[e] the practice and procedure of collective bargaining and [to] protect[] the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Rather, the question for this Committee and for the Senate is whether it is proper to appoint, as Chairman of the quasi-judicial agency charged with running representation elections and with judging the legality of the conduct of the parties to that election, a man who has devoted a substantial part of his professional career to putting together anti-union campaigns and anti-union materials.

To put that question in perspective, let me ask another: Would management and the members of the general public who believe that management should be treated with scrupulous fairness accept a union organizer of unimpeachable reputation — such as AFL-CIO Organizing Director Alan Kistler or the late CIO Organizing Director Allan Haywood — as NLRB Chairman?

Under the standards formulated by Senator Hatch, the answer to the question posed by Mr. Van de Water's nomination and by my hypothetical question is that the NLRB's institutional integrity is best served by consistent application of the rule that [redacted]ne should be appointed to the Board from the ranks of management or labor.

One side's armorer should not make or enforce the rules governing both sides in the ensuing contest.

The CHAIRMAN. Thank you.

As I understand it, you contend that Mr. Van de Water should not be appointed because he has served as a consultant to various employer groups and he has actively opposed their employees' attempts to organize and maybe has participated in decertification actions.

You said in your statement that he has devoted a substantial part of his professional career to putting together antiunion campaigns and antiunion materials.

I think your testimony also makes reference to the records of the AFL-CIO Los Angeles-Orange County Organizing Committee from 1963 to 1967.

In the illustrations that you have given us, do you believe that he has acted illegally in giving the advice he has and the writings he has made?

Mr. DONAHUE. I am not competent, on the basis of the scant evidence before me, Mr. Chairman, and the things we have been able to glean from his writings, to make that judgment as to whether he has done anything illegal or not.

It is clear to me from his writings that he has demonstrated an antiunion animus. It is clear to me that he has devoted a substantial part of his career to attempting to assist employers in frustrating employee efforts to form unions.

He speaks of 130 election campaigns in which he has been personally involved.

The CHAIRMAN. Do you find any of that which you have brought up to be illegal?

Mr. DONAHUE. No, sir; as I say, I am not able to make a judgment on that.

The CHAIRMAN. In your opinion, is any of it unethical under the legal canons of ethics or otherwise?

Mr. DONAHUE. I think I would have to make the same answer, Senator. I cannot judge. I was not present when the speech was made, and I cannot tell you where the emphasis was placed.

I think it is possible to make those kinds of statements in such a way as to have them be more persuasive on the side of the letter of the law rather than the spirit. You might describe that as ethical or unethical; I just do not know how you would judge that.

The CHAIRMAN. Are you prepared to submit for the record all illustrations where you think Mr. Van de Water either spoke matters or wrote materials which you consider to be antiunion?

Mr. DONAHUE. We would be happy to submit what materials we have.

I would hope, Mr. Chairman, that the committee would inquire into that far more deeply than you have.

I do not know. I would be interested to know what were the 130 campaigns in which Mr. Van de Water was engaged and what were the 125 that he won. Did he file persuader activity reports with the Labor Department during those years? Was he, in fact, engaged in persuader activities?

He said in answer to a question from Senator Williams that he was engaged in speaking before employees during organizing campaigns, if my recollection of his statement is correct.

He said he was engaged in speaking before employees during the campaign. That seems to me to get perilously close to being persuader activity, if it is not indeed persuader activity. I do not know if he filed reports or not.

I only mean to say, Mr. Chairman, that I cannot supply you more than we have.

The CHAIRMAN. Will you supply all that you do have and what you think is relevant to this inquiry with regard to Mr. Van de Water? Could you do that by the end of the week or do you need more time?.

Mr. DONAHUE. Yes, sir. I would think we could do it by the end of the week.

The CHAIRMAN. Are you aware of any finding by a court or agency, or a bar association for that matter, that Mr. Van de Water has ever engaged in any impropriety or unlawful conduct during his professional career in labor-management relations?

Mr. DONAHUE. No, sir.

The CHAIRMAN. You do not know of any?

Mr. DONAHUE. No, sir.

I had never heard of Mr. Van de Water until the day he was nominated.

The CHAIRMAN. I take it that you have checked throughout the wide-ranging membership of the AFL–CIO to come up with every possible criticism that could be made with regard to his particular nomination or any possible positive approaches that could be made with regard to Mr. Van de Water. Have you done that as well?

Mr. DONAHUE. I would think that we have checked, to the extent we have been able in the time we had. I do not think we have plumbed the full depths.

If I knew which 125 or 130 campaigns Mr. Van de Water had been engaged in, I could then examine with the unions involved what that conduct was.

The only affirmative comment of Mr. Van de Water I have heard is from Mr. Brewer. I have read his statement here.

The CHAIRMAN. He is a union leader.

Mr. DONAHUE. I believe he is retired from the IATSE and is now a consultant to a local of the IATSE, but he is going to testify before you.

There was reference also to a telegram of support or a statement by a Mr. Demers who is the CWA vice president from California.

Senator Percy included in his statement an excerpt from the CWA Pride, which is a newsletter of that region of the CWA. It is not a publication of the national organization.

Mr. Van de Water referred in his testimony to Mr. Demers support.

I think he may have inadvertently overstated it. He said that Mr. Demers had said: "I am behind you and so is the CWA."

If Mr. Demers said, "and so is the CWA," then he has misspoken.

I am authorized to say to you, Mr. Chairman, on behalf of the CWA, that Mr. Demers does not speak for it on this issue. The CWA is opposed to the confirmation of Mr. Van de Water. You will shortly have a telegram from CWA president Glenn Watts to that effect.

The CHAIRMAN. Mr. Demers is a vice president in California.

Mr. DONAHUE. Yes, he is.

The CHAIRMAN. He may have been referring to his own local CWA.

Mr. DONAHUE. Maybe. I have not seen the document, so I do not know.

The CHAIRMAN. You do not doubt that the telegram was sent, do you?

Mr. DONAHUE. No, I have no reason to doubt that.

The CHAIRMAN. Could you submit any excerpts that you might have from the AFL–CIO organizing committee records which you have alluded to in your statement which purport to show an anti-union bias held by Mr. Van de Water?

Mr. DONAHUE. Yes. We have a record of five, six, or seven campaigns in which Van de Water Associates were involved.

The CHAIRMAN. Will you make sure that those are submitted for the record here today? We will include those in the record as part of this record.

Mr. DONAHUE. Yes, sir.

[Material supplied for the record follows:]

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John DeConcini
Wayne E. Glenn
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William Konyha
Joyce D. Miller
John J. Sweeney
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October 5, 1981

The Honorable Orrin G. Hatch, Chairman
Senate Labor and Human Resources Committee
4230 Dirksen Senate Office Building
Washington, D. C.

Re: The Nomination of John R. Van de Water to be Chairman of the National Labor Relations Board

Dear Senator Hatch:

In conformity with your request following my testimony stating the AFL-CIO's opposition to the above-noted nomination, let me make the following points:

1. Mr. Van de Water, in his article "How To Deal With The Union", admits that as of the time of that article (the early 70s), he had been personally involved in 130 employer campaigns to block organizing efforts. The AFL-CIO, of course, is not privy to any information concerning the identity of all of the employers for whom Van de Water Associates acted, the time and place of the organizing efforts involved, the nature of the employer campaign, or Van de Water Associates' role in the employer campaign. Obviously Mr. Van de Water is the best source of that information. And, equally obvious, this information is highly relevant in determining whether this nomination should be confirmed. We believe that the Committee should obtain full information from Mr. Van de Water on these campaigns and on all others in which he has been involved and believe that that information could then be examined and weighed by the members of the Committee in forming their judgments on Mr. Van de Water's suitability for this office. He should be judged on all the facts of his career and obviously only a small part of the relevant record is before the Committee.

2. I am enclosing a list compiled by the Federation's Los Angeles-Orange County Organizing Committee of eighteen instances during the period 1964-1972 in which Van de Water Associates was the management consultant to employers attempting to defeat efforts by their employees to organize. We are unable to tell whether these eighteen campaigns are included in the 130 Mr. Van de Water referred to his article or whether they are in addition to that number.

3. The materials attached to my testimony and those used by employers in these campaigns all argue the view that union representation and collective bargaining are bad for employees, for employers and for the society in general. That premise is directly contrary to the principles stated by Congress in the National Labor Relations Act and Labor Management Relations Act. Those Acts read most narrowly, while respecting employee free choice and recognizing that employers may, within specified limits, oppose organization if they wish, stand for the proposition that the right of working men and women to form and join labor organizations is a proper means of expressing their aspirations for a fair return for their labor and for a measure of control of their working lives and that collective bargaining contributes to industrial peace and justice. An individual who does not accept these central aspects of the national labor policy that Congress has devised should not head the agency with the primary responsibility for administering that policy.

4. Several of the questions you posed when I appeared raised the issue of whether the AFL-CIO opposed Mr. Van de Water's nomination on the ground that he has engaged in wrongdoing that disqualifies him from serving in government office. That is not the basis of the Federation's opposition. So far as we know, Mr. Van de Water has not broken the law. (I should add, however, that our attorneys believe that portions of Mr. Van de Water's "How To Deal With The Union" article and his view of what constitutes persuader activity requiring registration under the Landrum-Griffin Act as stated at the hearing are not consistent with either the letter or spirit of the law. We would be pleased to amplify on this point if the Committee believes that desirable.)

We oppose Mr. Van de Water to be NLRB Chairman because his management consultant activities, as we understand them, show him to be an active anti-union partisan, opposed to the exercise by employees of their right to choose union representation, and opposed to people's efforts to gain access to collective bargaining. We do not believe that union organizers or management opposers of organization should serve on the NLRB.

5. In my testimony I noted that the AFL-CIO has stayed with the position that the Board's institutional integrity is best served by denying membership to active partisans for either side, even though management has not. It is our view that our position is the only one compatible with the criteria to be applied to Board nominees you stated during the last Congress. Unless we misunderstood the facts, if those criteria are applied in this instance, Mr. Van de Water cannot be confirmed. Thus, if on this record confirmation ensues, we will have no choice but to take the Senate's action as a final repudiation of our position on the status of partisans and a renunciation of the test of complete objectivity and independence.

6. Finally, I ask you to look with close attention at the two fliers prepared by the Pharmaseal Laboratories Workers' Committee and addressed to Mr. Van de Water which express rather clearly the frustration of those employees with Mr. Van de Water's efforts to persuade them to be against the union and their frustration with the fact that while he was apparently holding "captive audience" meetings, he refused to engage in open debate. (Here again we are unable to judge from the information now available whether Mr. Van de Water's activities in this campaign might be judged by the Department of Labor to constitute "persuader activities." The fliers do put into question Mr. Van de Water's statement at the hearing that he never engaged in such activities.) Is it fair and proper to ask those employees and the others like them who are struggling for union representation against employer opposition to accept the same Mr. Van de Water as their judge?

I would ask that this presentation be entered in the record. I have distributed copies of this letter to all members of the Committee. I further request that the hearing record remain open for a reasonable period of time for the purpose of adding additional documentation which we may receive.

Very truly yours,

Thomas R. Donahue

Secretary-Treasurer

ORGANIZING CAMPAIGNS IN WHICH THE RECORDS OF THE AFL-CIO LOS ANGELES-ORANGE COUNTY ORGANIZING COMMITTEE SHOW THAT VAN DE WATER ASSOCIATES ASSOCIATES ACTED AS MANAGEMENT CONSULTANTS TO THE EMPLOYER

UNION	COMPANY	CAMPAIGN YEAR
Auto Workers	*National Screw	1964-1966
	Cadillac Gage	
	ITT Gilfillan	
	Weston-Borg-Warner	1963
	IMC Magnetics	
Steelworkers	*ITT Canon	1972
Brick & Clay	**Pharmaseal	1962, 63 & 64
Intl. Br. Electrical Workers	*Transval	1964
	*Litton Systems	1966
	Tevco aka Carole Cable	1964 (in U.E. as of '69)
	*Pacific Electricord	1963-65
	ITT General Controls	
	TIC (Canejo Valley)	1968
Intl. Union Electrical Workers	Packard Bell	Dec. 1965
Machinists	*Don Baxter, Inc.	1964
	General Controls	
	Burns Aero Seat	1965
Marine-Shipbuilding	U.S. Divers Corp.	March 1969

*The asterisk indicates campaigns from which the Committee preserved employer propaganda.

**The double asterisk indicates a campaign from which the Committee preserved both employer and union materials.

The CHAIRMAN. Thank you.

Do you have any specific allegations—anybody within the AFL-CIO or any other union, affiliated or otherwise, or anybody for that matter—as to any impropriety in Mr. Van de Water's career?

Mr. DONAHUE. I do not, Senator.

I would say to you that I do not think that is the proper test.

The CHAIRMAN. It is just a question to clear things up.

Mr. DONAHUE. I do not have such information.

I would only say to you, with all respect, it is not the test that has been applied to previous candidates for appointment before this committee.

The CHAIRMAN. That is not quite true.

You have been listening to Mr. Van de Water's testimony today. Did you find any fault with his testimony as he gave it here to this committee, saying that he would be objective and unbiased and does believe in the union movement, as I understand it, and has engaged in advising unions as well and has consulted with unions when they have retained him?

Mr. DONAHUE. As I say, I do not know Mr. Van de Water personally. It is difficult for me to make a judgment as to the validity of what he says or of his ability to be objective or fair in these matters.

I think that to some extent the committee ought to inquire further into that record of Mr. Van de Water's involvement with the unions.

It is my understanding that Mr. Van de Water referred to working with the International Association of Machinists in California. It is my understanding that the work he did with and for the machinists was back in the early 1950's and that later he participated in major employer campaigns against the same local unions of the machinists.

However, I am not able to give you detail on that. I will try, if you wish, to supply it by the end of the week.

The CHAIRMAN. Can you submit anything that would bolster your position?

My question basically is this: Did you find anything objectionable in anything he said here today, in view of the fact that he made it very clear that he will be an objective and impartial Chairman of the National Labor Relations Board once confirmed? Did you find anything objectionable here today?

Mr. DONAHUE. I could not have objection to his saying that he would try to do that, Senator; no.

The CHAIRMAN. Do you or any of your affiliates or any other union personnel, or anybody for that matter, with whom you have had conversations, have evidence that Mr. Van de Water's character is not one of honesty or integrity?

Mr. DONAHUE. No; I have no such information, Senator.

The CHAIRMAN. I do take an interest in the fact that in labor-management relations, generally, people come out of law school and go to one side or another. It is very difficult to change from one side or another. However, Mr. Van de Water has had experience with both sides and has consulted with both sides, according to his testimony today. That is an interesting consideration, if you give weight to it.

Mr. DONAHUE. Of the current four members of the Board, I do not think that is true.

My recollection is that Mr. Hunter went to work for the NLRB out of law school and then worked for you and the committee.

I do not think that Mr. Fanning or Mr. Zimmerman or Mr. Jenkins was ever employed by either labor or management.

The CHAIRMAN. In this case, Mr. Van de Water has been employed by both. He has made the statement that he is not anti-union.

Mr. DONAHUE. Senator, I would have to say that judging from his own statement, his employment by labor or his connections with labor have been fairly thin.

If this machinist information is correct, it is somewhat dated. It was the early 1950's.

The references in Mr. Van de Water's statement are a little oblique. I take it to mean that he was engaged in some sort of mediation process when he says that he was connected with the American Federation of Teachers and the California Teachers Association. Those two unions enjoy joint certification in Los Angeles.

The statement says that he worked for them or with them and with the board of supervisors and the school committee, or something like that.

It sounds to me like a mediation role, rather than a retention on behalf of a union to do union work.

I think that he is clearly identified, Senator, as a management representative who has run 130 campaigns against unions and against the efforts of employees to organize.

The CHAIRMAN. Hardly any management lawyer in the field of labor relations would not have advised management on various campaigns. That would be part of his experiences.

Mr. DONAHUE. That is why we say they should not serve on the Board.

They are perfectly free to do that, and the system is established by the Congress in such a way that we have advocates on both sides. However, I would not sit here and ask you to confirm my appointment or the appointment of our director of organization to the National Labor Relations Board.

The CHAIRMAN. Of course, nobody is claiming that he is a director of a national antiunion organization either.

Mr. DONAHUE. Something less than national, Senator. He has apparently only worked in California.

The CHAIRMAN. Let me ask you this:

Is it your contention then that anybody who has worked for either management exclusively or labor exclusively should not be given an appointment to the National Labor Relations Board?

Mr. DONAHUE. Not only my contention but the consistent position of the AFL-CIO.

The CHAIRMAN. I see.

Mr. DONAHUE. It is our consistent position that advocates are advocates, and that the people on the National Labor Relations Board should not be—and you should not make of the Board—a group in which the Chairman or some member of it, becomes a swing member, by putting two union advocates and two company advocates on it. We do not believe that is what the Board is for.

The CHAIRMAN. Maybe that is what is wrong with the Board. They do not have people who really have been in the frey.

Let me just ask you this:

You were, I thought, fairly critical of at least three members of the Board—including Mr. Nash and Mr. Miller—because they had been management lawyers. You felt that they had participated in labor law reform.

As you know, we have been through this together before.

Mr. DONAHUE. Yes.

The CHAIRMAN. I think it is tough on both of us.

One of the problems I had was seeing the Chairman of the National Labor Relations Board advising on the writing of the bill and throughout the whole legislative process. One of the accusations which was raised, which was fairly well-established, was that Mr. Fanning had participated up front in the development of the bill as a Chairman of the quasi-judicial entity in the Government and admitted it. He admitted that he had advised.

Mr. DONAHUE. Your memory of the labor law reform struggle is far happier than mine.

I would note that Mr. Van de Water when asked that same question by Senator Williams today said that of course he would respond to any congressional or governmental inquiry and lend assistance in terms of changing legislation.

The CHAIRMAN. I think writing the bill may not be quite as fair.

Mr. DONAHUE. For the record, I would assure you—and state it as my certain knowledge—that Mr. Fanning did not write the labor law reform bill.

The CHAIRMAN. No; his clerks did.

Mr. DONAHUE. No.

The CHAIRMAN. Let me just say this to you:

My experience with labor law reform is not a happy one either. It was a resolution of a very difficult problem that could only be resolved one way, because neither side was willing to compromise.

To make a long story short, all I can say is that I am not so sure that because a man has been a management lawyer or a union lawyer that he or she should be foreclosed from being on the Board.

I would hate to think that we would apply that in judicial nominations throughout this country.

I think it is very important, unless you can show otherwise, that Mr. Van de Water's testimony that he is not antiunion—and, yes, that he has advised management; but he has also advised labor unions as a consultant, professor, teacher, and as an attorney—has to be taken at face value. We must accept it unless we have much more information and confirmed accusations than what you have brought here today.

I know you are sincere and dedicated, and I accept that. However, that would be my personal feeling on the matter.

Senator Kennedy?

Senator KENNEDY. You would draw a distinction, Mr. Donahue, between the attorney representing management and an individual who has acted as a consultant to management during the union organizing campaigns?

Mr. DONAHUE. Yes, I would, Senator.

Senator KENNEDY. Is that an important distinction, do you think?

Mr. DONAHUE. I think it is a very important one. I think that very often in organizing campaigns or any labor relations issue in firm, the person who is the normal and ordinary counsel of a firm may be asked for an opinion or asked to participate in a particular issue.

That person and his participation in that issue is very, very different than the person who holds himself out as a labor consultant or a management consultant and makes it his prime source of business and devotes a principal portion of his time and work to that and holds himself out as somebody who can help you defeat the union and, if you have a union, can help you to get rid of them.

Senator KENNEDY. What you are really talking about, as I understand it, in terms of what you would be willing to see appointed to the Board is not an attorney representing management but the kind of consultant to management who has shown repeatedly that type of disposition in terms of being antiorganization or antiunion?

Mr. DONAHUE. That is clearly the case, sir.

Senator KENNEDY. And that is the distinction you are trying to point out here.

Mr. DONAHUE. Yes, indeed, Senator.

I might just note that when Mrs. Murphy was appointed as Chairman of the Board, no objection to her appointment was made by the AFL-CIO. Mrs. Murphy had been an attorney who had represented both management and labor groups to some extent in her work before going to the Department of Labor. No objection was made.

That is a record of a quite different legal career than that which Mr. Van de Water presents.

Senator KENNEDY. Do you know of your own personal knowledge whether there was any illegal or criminal accusation against Don Zimmerman for Board member?

Mr. DONAHUE. There was none that I am aware of, Senator; none at all.

Senator KENNEDY. Or John Truesdale?

Mr. DONAHUE. None whatsoever, sir.

Senator KENNEDY. As I understand it, the criteria that has been suggested before this committee has been of Board members who are perceived as objective and independent. You would settle for a person who had the other qualifications who was objective and independent; is that correct?

Mr. DONAHUE. And could be expected to bring some balance to the job.

I say, Senator, that I think the perception of that objectivity and independence is as important as the reality.

We do not so perceive Mr. Van de Water.

If we had been consulted earlier in the process and if there had been an effort to find the consensus that the chamber of commerce thought was so important when the last two appointments were considered by this committee, we would have made our views known at that point. Perhaps the consensus would have formed on a different candidate.

Senator KENNEDY. We made a request of Mr. Van de Water to supply certain information to the committee.

Could I ask the Chair or the staff whether this article was submitted to the committee?

The CHAIRMAN. Yes.

Mr. DONAHUE. And entered in the record, I believe.

Senator KENNEDY. Was this made available by Mr. Van de Water?

Mr. DONAHUE. I do not know that.

The CHAIRMAN. It sure was. The tapes have been made available also.

Senator KENNEDY. Do you know in the examination whether there have been prepared any similar kinds of information or document which would advise unions as to similar kinds of guidance and advice as to how to undermine their interests or their authority?

Mr. DONAHUE. Issuing from Van de Water Associates?

Senator KENNEDY. Yes.

Mr. DONAHUE. I am unaware of any such document or anything that would come remotely close to that, Senator.

Senator KENNEDY. It was presented, at least in his response, that he gave kind of a balanced view--that he would consult with employers and make them knowledgeable about their rights and then he would also do the same for unions.

I imagine if he were here, he would say: This is just an exposition for the management team, and I would be glad to have done the same for the unions.

In your own research, I am just wondering whether there is any indication, or whether staff has been able to find any kind of information or any documents, that would show that similar guidance, advice, or counsel to employees who were attempting to organize?

Mr. DONAHUE. No.

In fact, Senator—and I do not think that we have the documents here—but there are one or two leaflets which were published in connection with an organizing campaign in 1964 in the Los Angeles County area where Mr. Van de Water was the labor consultant to the company.

Indeed, the circulars are open letters addressed to Mr. Van de Water. They are "Dear Johns." They invite him to come and debate the issues that were presented to the employees in a more open forum or to speak to the union representatives or to the union adherents in a situation. To my knowledge, he never accepted the invitations; but I know they were extended because I do recall seeing those leaflets.

Senator KENNEDY. I do not know whether those are available.

Mr. DONAHUE. Yes, they are, Senator. We can supply them to you.

The CHAIRMAN. Would you supply those to the committee?

Mr. DONAHUE. Yes.

[Material referred to follows:]

PHARMASEAL LABORATORIES
INCORPORATED
1015 GRANDVIEW AVENUE • GLENDALE 1 CALIFORNIA

March 13, 1964

P. O. BOX 757
4401 FORDALE AVENUE
IRWINDALE, CALIFORNIA

Dear Employee:

Whenever one thinks of unionism as practiced today, one can't help but think of the violence, cost, and heartbreak resulting from strikes. The day of union violence is not past. Just this month, we were shocked to learn of an epidemic of bombings and sabotage on the Florida East Coast Railroad. You are surely aware of the General Telephone Company strike in our own community. The Kohler strike in Wisconsin resulted in murder, house burnings, brutal beatings by imported "goon squads," and all sorts of harassments of employees and the public. That strike went on for years, until the people of Kohler were sick of the word "union." Certainly union behavior has deteriorated since the days of the highly respected Samuel Gompers, founder of the American union movement.

Unions may say that they don't believe in strikes, but the record says otherwise.

When a union resorts to strikes in an effort to gain its ends, everybody suffers.

1. The employee suffers because his regular income stops.

2. The company suffers because it loses business when it is unable to fulfill its commitments to customers. Sometimes the drop in business may be so serious that a company can never resume its place as a major employer.

3. The community suffers when all or any part of a million-dollar payroll is withdrawn from circulation during a strike. This hits the butcher, the baker, the supermarket, and the newspaper boy. It hurts the local service stations, local government, even the churches and charitable institutions.

The most regretable effect of strikes is the damage they do to the spirit of co-operation and friendliness among the employees.

How ready are you to hand your right-to-work over to a union – a union that has no respect for your feelings or for the widespread consequences of its actions?

We have not been threatened with a strike, nor do we expect one. As a matter of fact your company would bargain in good faith to avoid strikes. However, where there is a union, there is always the possibility of strikes.

Most of you have seen during the past sixteen months just what kind of people run the union that is trying to organize our group. I don't think that you will want to place the future of your job into their hands.

The best way to keep the control of your job in your own hands is to vote NO in Wednesday's election.

Sincerely yours,

Donald F. Adams

Donald F. Adams
Plant Manager

DFA:dl

February 12, 1964

Dear Mr. Vanderwater:

The workers in the Pharmaseal plant tell us that you and your boy, Ken Simon, are still pushing the strike issue in the plant.

Haven't you learned by now that Pharmaseal workers do not "swallow" the fear-tactics you are trying to use.

Why do you try to talk us into wanting a strike?

The workers don't want a strike. The Union doesn't want a strike and we do not believe that the company wants a strike.

THERE WERE FEWER MAN-DAYS LOST IN 1963 BECAUSE OF STRIKES AND WALKOUTS THAN IN ANY YEAR SINCE WORLD WAR II. DON'T YOU READ THE NEWSPAPERS, VAN?

THE PRESIDENT OF THE UNITED STATES, LYNDON JOHNSON SAID: "This record illustrates how far industrial democracy has advanced in this country in recent years. I know of no better confirmation of the vitality, the strength and the promise of the free enterprise system than that shown by the ability of labor and management to work out their destinies in a free and peaceful manner."

For your education, Van!

Van, please read this to Ken.

But, you apparently do not agree with the President of the United States. We honestly believe you are trying to push us into a strike because you would probably make "mucho dinero" if it ever happened.

Your actions have convinced us that you do not believe that workers should have the right to peacefully bargain for higher wages, health insurance and better working conditions. If you did believe in peaceful negotiations, you would not be pushing for a strike. DO YOU BELIEVE IN THE "FREE ENTERPRISE" SYSTEM PRESIDENT JOHNSON SPEAKS OF? WE DOUBT IT.

Wouldn't it be a terrible thing if we did not have a democracy, Van? If we had a Dictator in this country we would not have the right to have our union. WHAT WOULD YOU DO THEN?

There would be no unions for you to fight -- no workers for you to hurt -- no companies to "mis-represent" -- no "dinero" for your big, fat bank account.

But, maybe you could find a way to make a "money deal" with the Dictator and learn some newer ways to hurt workers. Yes, maybe you could!!!

PHARMASEAL WORKERS UNION COMMITTEE

A Thought for Today:

How much respect can we have for a man who makes a profit from human misery? SHAME ON YOU, VAN!

February 5, 1964

OPEN LETTER TO MR. VANDERWATER

FROM: THE PHARMASEAL WORKERS

Dear (Professor) Van:

Our last open letter to you, dated January 22, 1964, was quite clear, we hope. In that letter we asked you politely if you would be decent enough to meet our Union representatives face-to-face in an open meeting.

Our reasons should also be quite clear to you. We heard you say that it is the American way to listen to both sides of any issue and then judge for yourself. Isn't this what you teach your students at UCLA, professor?

But, as this is written, we still have not had an answer from you to the following questions --

1. Why do you contract yourself out like a hired gun to bust Unions? Do your students at UCLA know about this "other life" of yours?

2. Do you think it honorable to frighten working men and women with twisted words which may lead them to believe that they will lose their jobs if they form a Union? How do you think some of the UCLA students who come from Union families would react to this?

3. What about the challenge to an open debate which we issued to you in our last letter? If you are so sure of yourself and your so-called "high ideals" regarding the distruction of Unions, why don't you and/or your close associate, Ken Simon, come into the open and face those who are capable of punching big holes into your "twisted" arguments?

4. Why are you against collective bargaining through a Union?

By day you teach your students courses in laws which govern labor, economics, etc., at the University. By night you distort the very courses you teach to decent, unsuspecting students. What kind of a double-headed monster are you, anyway?

When are we going to hear both sides of the issues raised from the floor of a shop meeting of the workers? Or are you going to continue holding "captive," one-sided, undemocratic meetings of the workers behind the closed plant doors?

Yours truly,

Pharmaseal Employees Committee
for a Strong Union

Senator KENNEDY. I think you have raised some important questions. I would like to know the relationship between Mr. Van de Water and those publications. Do you think that we ought to find that out?

Mr. DONAHUE. Senator, I would hope that you and the other members of the committee and Chairman Hatch would feel that our testimony has certainly raised enough questions that deserve to be further explored.

You are considering for appointment as Chairman of the quasi-judicial agency which decides our fate every day a man who I say to you has boasted of the fact that in 130 campaigns he beat us 125 times. Then you ask me to believe his statement that he is objective or can be objective.

The CHAIRMAN. He may just be very effective here.

Mr. DONAHUE. He is effective; there is no question about that. In the area of California in which he worked, he was apparently effective—effective in accomplishing the employer's objective and not in assisting the employees to fulfill their desire.

Senator KENNEDY. Do we know, Mr. Chairman, from any information that has been submitted by Mr. Van de Water about those particular union elections and which ones he has been involved in?

The CHAIRMAN. We have no information on that.

Senator KENNEDY. It is your belief that if we found out the nature of the publications, that we would gain a better insight into whether Mr. Van de Water actually meets that test of objectivity and fairness and equity which is so important in terms of this appointment.

Mr. DONAHUE. I think I would come back to an examination of whether or not Mr. Van de Water's role amounted to persuader activities within the definition of the Landrum-Griffin Act and whether or not he ever filed persuader activity reports as labor-management consultants are required to do if they engage in persuader activities; and if he filed such reports, what did they say.

I would think there are a whole series of questions which arise from the boast he has made in his speech.

I must say, Senator, that I cannot believe that a careful reading of that article would convince people that the speaker was setting forth a truly objective point of view.

He speaks for an antiunion spirit. He speaks of how to get rid of the union if you have it and how not to have it. He explains why employers do not want unions and says not a word about unions contributions or workers interest in unions.

The CHAIRMAN. Do you know the date of that article, Tom?

Mr. DONAHUE. No, I am sorry, Senator; I do not.

Senator KENNEDY. Thank you very much.

I think you have given us a lot to think about and a lot to work on. I appreciate your testimony and your help to this committee, again.

Thank you.

Mr. DONAHUE. Thank you.

The CHAIRMAN. Senator Williams?

Senator WILLIAMS. Most of the things that I wanted to raise have been raised. I did want to ask one thing that deals with this time

frame. How recently, if you know, has Mr. Van de Water been involved in this consulting activity during organizing times?

Mr. DONAHUE. It is hard for me to establish that, Senator.

Some of the materials I referred to identify him as being involved in a 1964 campaign in Los Angeles and in the period up to 1972 or 1973.

Mr. Van de Water testified that he has in the last 15 years—which would be since 1966—has primarily done general management consulting on motivational training and that sort of thing.

I have read those materials or looked at some of the materials of his current seminars on motivation and communication and so forth. They are totally removed, by and large, from the labor-management area.

I am not able to say when he was actively engaged in the labor-management relations issues and when he ceased being in those.

It would appear to me that he has been involved in labor-management activities at least up to the early 1970's.

It may well be that he has not been engaged in labor-management activities and has not dealt with them as issues in the last 8 years by his testimony.

I would suggest, Senator, that is a question perhaps you can obtain more on from Mr. Van de Water.

I think it is a fair question as to what he has been doing in the last 10 or 15 years. I cannot speak for that.

Senator WILLIAMS. Would that reduce your apprehension about his objectivity if it were a long period since he was involved that way?

Mr. DONAHUE. If what he has been doing for the last 15 years has been conducting seminars on human communications and motivations, that would raise a different set of questions about his qualifications to be the Chairman of the National Labor Relations Board.

If, indeed, he has not been actively engaged in the field in the last 15 years, as he said, that raises that question about his qualifications.

It would not ease my burden and it would not change my attitude in terms of the identification of Mr. Van de Water as a management representative who has devoted a substantial portion of his life as a management advocate in antiunion activities. It would not change that at all.

Therefore, it would not change my view that he should not be confirmed as Chairman of the Board, anymore than I would propose to you the confirmation of an organizing director or an organizer of the AFL-CIO.

It has always been our view that we should not propel onto the Board such persons, and we should not allow management to propel such advocates onto the Board. Therefore, it would not change my view on that essential question.

Senator WILLIAMS. Thank you very much.

The CHAIRMAN. Mr. Van de Water is still here.

Mr. Van de Water, have you ever been a persuader in labor-management relations?

Mr. VAN DE WATER. Never at any time, sir.

The CHAIRMAN. Have you ever filed any documents as a persuader pursuant to the Landrum-Griffin Act?

Mr. VAN DE WATER. I have never been a persuader. I have never engaged in any conduct in dealing with employees other than, as I stated in my testimony, to let them know that I had been asked by the company to explain the labor laws. I stated every time that I was not there in any way, either directly or indirectly, to influence employees on whether to vote or how to vote in union elections.

The CHAIRMAN. Do you have an additional set of the audiovisual tapes?

Mr. VAN DE WATER. Yes. Your committee, sir——

The CHAIRMAN. We have one set. Do you have an additional set here with you that we could have for the minority?

Mr. VAN DE WATER. I believe that they were offered to the minority a number of weeks ago.

The CHAIRMAN. They were.

Mr. VAN DE WATER. By your staff. I do not know whether they have seen them or not.

The CHAIRMAN. All I am asking is do you have an additional set?

Mr. VAN DE WATER. I do not have myself; no. They could be secured.

The CHAIRMAN. Could you secure an additional set real quickly for me?

Mr. VAN DE WATER. Are they not available, Mr. Chairman, through the majority?

The CHAIRMAN. I have them, but there are members of the minority as well who want to listen to them. It would be helpful if we had two sets.

Mr. VAN DE WATER. I will get in touch with the corporation that put them together and ask them to send an additional copy.

The CHAIRMAN. If they could speed that to us, it would help.

Mr. VAN DE WATER. Surely.

The CHAIRMAN. Mr. Donahue, you indicated that any other objections that you might be able to raise or any other documents that you might have will be submitted to us by Friday of this week.

That does not mean that you cannot submit other documents later if you come across them, but we would like to have what you presently have submitted to us by Friday of this week.

Mr. DONAHUE. Surely. We can do that, Senator.

I would only offer the qualification that if we are unable to supply certain materials to you by Friday, we will make the staff aware of that.

The CHAIRMAN. Just let us know.

Mr. DONAHUE. We will do whatever we can by Friday of this week.

Some of the materials I know are readily available.

The CHAIRMAN. As you know, we have delayed this nomination longer than we probably should have.

I would like you to expedite sending whatever materials you can to us so that we can look them over and give them every consideration.

Thank you so much. We appreciate having you with us here today.

Mr. DONAHUE. Thank you, Senator.

[The following material was subsequently received for the record:]

President
Lane Kirkland
Secretary-Treasurer
Thomas R. Donahue
Vice Presidents
John H. Lyons
Peter Bommarito
Thomas W. Gleason
Frederick O'Neal
Jerry Wurf
S. Frank Raftery
Al H. Chesser
Martin J. Ward
Murray H. Finley
Albert Shanker
Glenn E. Watts
Sol C. Chaikin
Edward T. Hanley
Angelo Fosco
Charles H. Pillard
William H. McClennan
J. C. Turner
Lloyd McBride
David J. Fitzmaurice
Kenneth T. Blaylock
Alvin E. Heaps
Wm. W. Winpisinger
William H. Wynn
John J. O'Donnell
John DeConcini
Wayne E. Glenn
Robert F. Goss
Daniel V. Maroney
William Konyha
Joyce D. Miller
John J. Sweeney
Douglas A. Fraser

American Federation of Labor and
Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

November 12, 1981

The Honorable Orrin G. Hatch, Chairman
Senate Labor and Human Resources Committee
4230 Dirksen Senate Office Building
Washington, D.C.

Re: The Nomination of John R. Van de Water to be Chairman of the National Labor Relations Board

Dear Senator Hatch:

I have had the opportunity to review your letter to Mr. Van de Water dated October 5, 1981 and his response. I wish to take this occasion prior to the close of the period during which you have generously kept the record open to add — to my testimony and to my earlier letter on this nomination -- information which further reinforces our position that Mr. Van de Water does not meet the criteria applied by the Senate in passing on prior NLRB nominees. Simply stated, Mr. Van de Water cannot meet the test you stated last year — that a nominee to the NLRB be "perceived as objective and, most important, independent."

Van de Water Associates, for nearly a decade in Los-Angeles-Orange County, California and elsewhere, served as management consultants to numerous employers who actively opposed their employees attempts to organize. Mr. Van de Water participated directly in that work.

In his article "How To Deal With The Union" — the only available full statement of his views on union organizing — Mr. Van de Water stressed that organization is an evil which management should fight and which, where employees have chosen a union, should be undone. That article shows too that Mr. Van de Water abused the labor law by luring a second union into an organizing campaign involving his employer client to split the vote and defeat both unions. The article further describes his instructions to management personnel on how to encourage employees to seek decertification of their union, in violation of the spirit and perhaps the letter of the law.

The hearing on this nomination concluded on September 30 with members of the Committee expressing concern over the scope and character of the nominee's representation of employers. We are disappointed at Mr. Van de Water's failure to be forthcoming in providing information from which the Committee and the labor movement could obtain a clear picture of his activities. One would have thought that the nominee himself would be the person in the best position to detail his own activities.

In your letter of October 5, you asked Mr. Van de Water to provide the Committee with the particulars on his activities on behalf of employers whose employees were engaged in union organizing campaigns. His response was that his records do not go back to the time in question, that his activities "probably" took place prior to 1973, and that he could recall only eleven corporate clients, whose names he listed, giving no further details.

While the AFL-CIO lacks the investigative authority of the Committee, we have uncovered an additional situation which took place in December of 1976, certainly well within the time a business firm retains its records, that puts into question the extent to which Mr. Van de Water has searched his files and his memory, and that supports our contention that he is not the person to serve as NLRB Chairman.

As we remember the hearing, you recalled Mr. Van de Water to state that he had never engaged in "persuader" activity and therefore had not registered under §203 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §433, which provides in relevant part as follows:

> Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly —
>
> to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; ***
>
> shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. ***
>
> Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such

> employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

The record shows that Mr. Van de Water acted as a company representative to "persuade" employees to reject union representation and that he did so as recently as December 1976.

On February 8, 1977, Wilford W. Johnson, Regional Director, National Labor Relations Board, Region 21, issued his report on objections filed by the International Chemical Workers Union, AFL-CIO in Bell Helmets, Inc., NLRB Case No. 21-RC-14829. That report states in pertinent part:

> The investigation disclosed that on the afternoon of Monday, December 13, 1976, 3 days prior to the election scheduled for December 16, 1976, the Employer had a campaign meeting at which its representative, Van De Water, spoke. In support of its objections, the Union presented several employee witnesses who had attended the meeting.
>
> According to these witnesses, Van De Water stated that he was there as a representative of the Employer and he would explain some things about the Union or tell them some facts about the Union. The statements allegedly made by Van De Water that were remembered by the witnesses are as follows:
>
> 1. During a strike the Employer could call in replacements and the employees could be permanently replaced.
>
> 2. The Union could raise the employees wages as well as increase them.
>
> 3. If the Union wanted to build a new building, it could raise the employees dues to pay for the building.
>
> 4. If the employees were on strike and the Union called a strike at another employer, the Union could require the employees to picket at the other employer's plant.
>
> 5. At one plant the Union dues were increased from $8 to $28 per month.
>
> 6. In some cases the Union could get employees fired if they didn't pay their dues or cases in which employees would not be allowed to work until their dues were paid.

7. If another plant at the same local union went on strike, the employees of that plant might get money from the Employer's employees strike fund.

8. The Union could make the employees go on strike by fines or assessments.

Mr. Van de Water's speech in Bell Helmets was not intended as, nor received by the participants as, a neutral presentation of the entire law stated in the NLRA; rather, his remarks were pointed to convincing the Company's employees not to join a union. Presentations for that purpose are persuader activity covered by §203 of the LMRDA. That is plain on the face of the statute and is confirmed by the attached opinion in Wirtz v. Fowler, 372 F.2d 315 (C.A. 5, 1966) and by the attached Department of Labor opinion letter both of which deal with conduct indistinguishable from that outlined in the Bell Helmets opinion.

In Fowler, the Fifth Circuit outlined the underlying facts as follows (the footnotes and the facts concerning incidents that do not involve addressing groups of employees are omitted):

> The Court below summarized [the facts] in such a general fashion as to mask the real nature of Appellees' persuader activities. Because these facts vividly portray these activities and are so essential to the applicability of the Act, we deem it appropriate to describe in some detail Appellees' activities on behalf of the four named clients.
>
> L. D. Plante, Inc.
>
> In 1960, Appellees [lawyers] represented L. D. Plante, Inc., and Paul Saad, an attorney associate in the firm and an agent of Appellees, performed certain services for that company. During a labor dispute arising out of a unionization drive, Paul Saad, on at least two occasions, spoke to groups of employees during working hours. At one meeting, held in Mr. Plante's office, Saad, introduced as Plante's attorney, discussed the union that the employees were trying to form. Saad advised the four employees present that, under certain conditions, the Company would have the right to fire any employees who went on strike and that he would recommend that it do so. Saad also told the employees that, if they interfered with the railroad serving the Company, they could be put in the federal penitentiary. He also pointed out the benefits the Company was giving. At a second meeting, many of the plant employees were assembled to hear Mr. Saad. Saad discussed what the union would mean to those who joined it and what the employees would stand to gain and what they would stand to lose. He raised the issue of strikes and what they would mean to the employees, and when the Company could replace employees on strike.
>
> Plant City Steel Corp.
>
> 4

* * *

Granville M. Alley, Jr., an Appellee, Glen L. Greene, Jr., and Paul A. Saad, both associates in the firm and agents of Appellees, rendred services to Plant City during 1960-1961. In 1960, Saad and Greene attended group meetings of Plant City employees. Saad spoke to the employees assembled at those meeting. *** Saad was introduced by a company vice president as a company attorney. *** Saad told the employees *** that the company was paying its attorneys a large sum of money each year and that if there were no organization drive that money could be in the employees' pay checks. Saad also told the employees that they could lose jobs over trying to organize the union. Saad also discussed the cost of dues and said that the employees might not gain anything by joining a union.

As had his activities at Plante, Saad's efforts at Plant City left no doubt in the minds of the employees who heard him that his purpose was to dissuade them from joining the union. ***

Speed Sprayer Plant

Late in 1960, a union conducted an organizational drive among Speed Sprayer's employees. During 1960 and 1961, Appellees and Donald M. Hall, an associate in the firm and agent of Appellees, rendered services to Speed Sprayer and during this period Hall appeared and spoke at several meetings with employees. At a meeting, held early in November or late in October 1960, one employee testified that Hall "told us that the union couldn't do anything for us and we had fair wage — we was getting fair wages and if we joined the union we would be just paying dollars and could be taxed money and some of the people was going to strike and we could be made to support them until they go back to work." A witness, called by the Appellees, testified that Hall "made it plain, you know, that the company could do more for us than the union." At another meeting, Hall talked about what the union was not good for and stated that the union was out after the employees' money. He also talked about the Kohler strike which had gone on for several years, and told the employees that they too could be thrown out on the street. He had talked about benefits which the Company gave and the union could not — Blue Cross and Blue Shield, paid holidays and picnics. At a third meeting Hall talked on "What Can The Union Do For You." Hall told the employees that the Company

could give them more benefits than the union could. At several of these meetings Hall, in addition to talking about the union, pased out to the employees a booklet entitled "What Are Union Promises." [372 F.2d at 320-322.]

On these facts, the Court of Appeals concluded:

***Without belaboring the point, we think it clear beyond doubt that Appellees pursuant to arrangements with their four employer-clients undertook, and, in fact, performed, activities with the object — and it is difficult to conceive of a case where the object could be more "direct" — of persuading the employees not to join the unions. ***

* * *

*** Generally [Congress] *** felt that the giving of legal advice to employers was something inherently different from the exertion of persuasion on employees, and §203(c) was inserted only to remove from the coverage of §203(b) those grey areas where the giving of advice and participation in legal proceedings and collective bargaining could possibly be characterized as exerting indirect persuasion on employees *** not to remove activities which are directly persuasive but indirectly connected to the giving of advice and representation. [Id. at 324, 330.]

Consistent with that authoritative construction of §203, on April 17, 1981 John A. LeMay, Area Administrator, U. S. Department of Labor, Labor-Management Services Administration, Seattle, Washington, issued the following letter to an attorney in Yakima, Washington:

As you may know, this office has been conducting an to determine if some of the services you provided Washington Beef, during a period of union attempts to organize their employees; warrant the filing of disclosure reports under Title II, Section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA).

* * *

During the course of the investigation, several Washington Beef employees who were in attendance at an employer sponsored meeting, held in the McKinley Grange in July 1980, were interviewed. These employees stated you were present at the meeting and made what was considered a presentation of the mechanics of a representation election and you prseented both sides of the union issues as it related to wages and benefits. In

6

fact, each interviewee stated they felt you projected a subtle attempt to influence their voting in the coming election.

In light of the statements regarding your participation, it appears that a reportable activity was performed by you on behalf of the employer, and disclosure reports are required per the provisions of the LMRDA.

The Committee has the obligation to ask the Department of Labor to investigate Mr. Van de Water's failure to file persuader reports in this and all similar instances and, if the Department's investigation bears out the facts just detailed, the Department has the obligation to require the filing of such reports and to seek redress as provided in the statute for the failure to file.

The Bell Helmets campaign shows that Mr. Van de Water was, as late as December 1976, an active employer agent in opposing organization. It is not fit nor proper for such an agent to be entrusted with the Chairmanship of the Agency that sets the rules that govern representation campaigns and elections and that passes on the conduct of the parties in such campaigns.

Bell Helmets, we believe, shows also that the answer to the question you stressed during the hearing — whether Mr. Van de Water, while acting as an employer agent, complied at all times with the applicable federal law — is "no". While a mere showing that a nominee has abided by the law is hardly a sufficient qualification for office, a failure to abide by §203 of the LMRDA, which was passed specifically to regulate representation campaigns and to clearly identify those who are active non-union employer agents, is certainly a disqualification for the NLRB Chairmanship.

Sincerely

Thomas R. Donahue

Secretary-Treasurer

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
ROOM 3133, FEDERAL OFFICE BUILDING
909 FIRST AVENUE
SEATTLE, WASHINGTON 98174

TELEPHONE: (206) 442-5514
FTS: 399-5216

APR 20 1981

April 17, 1981

Mr. Wesley Wilson, Attorney
303 Halton Street
Yakima, Washington 98901

Re: Case #71-05598(70-C)

Dear Mr. Wilson:

As you may know, this office has been conducting an investigation to determine if some of the services you provided Washington Beef, during a period of union attempts to organize their employees; warrant the filing of disclosure reports under Title II, Section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA).

Section 203(b) of Title II, LMRDA states "Every person who, pursuant to any agreement or arrangement with an employer undertakes activities where an object there of is, directly or indirectly -

(1) to persuade employees to exercise or not exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor despite involving such employer, except information for use solely in conjunction with an administrative or arbital proceeding or a criminal or civil judicial proceeding;

shall file within thirty (30) days after entering into such agreement or arrangement to report with the Secretary signed by its principle president and treasurer or corresponding principle officers containing the name under which such person is engaged in doing business and the address of its principle office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principle officers containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the source thereof and, (B) of its disbursements of any kind, in connection with such services and the purpose thereof."

During the course of the investigation, several Washington Beef employees who were in attendance at an employer sponsored meeting, held in the McKinley Grange in July 1980, were interviewed. These employees varied in their views regarding union representation. Each employee stated you were present at the meeting and made what was considered a presentation of the mechanics of a representation election and you presented both sides of the union issues as it related to wages and benefits. In fact, each interviewee stated they felt you projected a subtle attempt to influence their voting in the upcoming election.

In light of the statements regarding your participation, it appears that a reportable activity was performed by you on behalf of the employer, and disclosure reports are required per the provisions of the LMRDA.

It is my understanding that a copy of the LMRDA and blank LM-20 and LM-21 forms were left with you along with a self addressed franked envelope. It would be greatly appreciated if you will comply with our request for disclosure by May 1, 1981.

If you have any further questions or feel that additional information is necessary please feel free to contact Investigator Ed Russell, phone: (206)442-4244.

Sincerely,

John A LeMay

John A. LeMay
Area Administrator

WESLEY M. WILSON
ATTORNEY AT LAW
303 MOLTON, SUITE NO 1
YAKIMA, WASHINGTON 98902
TELEPHONE (509) 452-2828

GARY E. LOFLAND
ADMITTED TO PRACTICE IN IDAHO

May 8, 1981

John A. LeMay
Area Administrator
U. S. Department of Labor
Labor-Management Services Administration
Room 3135, Federal Office Building
909 First Avenue
Seattle, WA 98174

Re: Case Nos. 71-5598 (70-C) and 71-5599 (70-B)

Dear Sir:

I note that you never answered my letter of April 16, 1981. Your office has never provided any case citation to support your position that you believe I engaged in reportable activities.

Your office has likewise never interviewed me or asked for my position on the matter.

I have examined the minutes of my one meeting with employees in an organizing campaign last year, and I feel confident that it is not reportable.

You allege that certain employees said that I talked with employees at the McKinley Grange in July 1980. I never talked with employees in July 1980. The one meeting that I attended at the McKinley Grange was on March 13, 1980.

I have noticed, in many years of hearings and trials, that witnesses often do not correctly remember what was said in a meeting many months ago, or who said what at the meeting. Since you have not provided me with any statements which you allegedly obtained from employees, and you concluded that the meeting was in July rather than on March 13, I have good reason to doubt the credibility of your witnesses or the fairness of your investigation.

However, I am willing to provide accurate information as to all earnings from employers in 1980, and all expenses, to the extent shown in the enclosed completed LM 20 and LM 21 reports.

If the matter is litigated I feel confident that I will prevail, and a finding will be made that the investigation was sloppy and violated the requirements of due process, that I did not engage in reportable activity, and, in any event that you are not properly entitled to any additional information. I would also request the State and American Bar Association, U. S. Chamber of Commerce, National Federation of Independent Business, Association of Washington Business, and other groups, to join me in showing that any claim for additional information is unconstitutional.

Sincerely yours,

Wesley M. Wilson

Wesley M. Wilson

WMW:db
Enc.
bc: Jim King

W. Willard WIRTZ, Secretary of Labor of the United States, Appellant,

v.

Cody FOWLER et al., Appellees.

No. 22350.

United States Court of Appeals
Fifth Circuit.
Oct. 19, 1966.

Action by attorneys for declaration of their rights under Labor-Management Reporting and Disclosure Act. The United States District Court for the Southern District of Florida, Charles B. Fulton, J., 236 F.Supp. 22, granted attorneys' motion for summary judgment and the Secretary of Labor appealed. The Court of Appeals, John R. Brown, Circuit Judge, held, inter alia, that partners engaged in the private practice of law and their associates who were engaged by their employer-clients to, among other things, persuade employees in relation to exercise of rights to organize and to bargain collectively and to supply employer-clients with information concerning employees' activities in connection with labor dispute were, with respect to these "persuader activities", not exempt from the reporting requirements of Labor-Management Reporting and Disclosure Act.

Reversed and remanded.

1. Labor Relations ⇐23

Provisions of Labor-Management Reporting and Disclosure Act are intended to require the reporting by persons who have been previously acknowledged by employers as persuaders of employees in relation to exercise of rights to organize and to bargain collectively as well as the reporting of unacknowledged persuaders. Labor-Management Reporting and Disclosure Act of 1959, § 203(b), 29 U.S.C.A. § 433(b).

2. Labor Relations ⇐23

Partners engaged in the private practice of law and their associates who were engaged by their employer-clients to, among other things, persuade employees in relation to exercise of rights to organize and to bargain collectively and to supply employer-clients with information concerning employees' activities in connection with labor dispute were, with respect to these persuader activities, not exempt from the reporting requirements of Labor-Management Reporting and Disclosure Act. Labor-Management Reporting and Disclosure Act of 1959, §§ 203(b) and (1, 2), (c, f), 204, 29 U.S.C.A. §§ 433(b) and (1, 2), (c, f), 434.

3. Labor Relations ⇐23

While disclosure to employee being persuaded that this is the mission of the identified persuader may attenuate the persuasion, the object of Congressional protection under Labor-Management Reporting and Disclosure Act transcends the immediate employees and unions, and the National Labor Relations Board, professional associations and Congress are to have the benefit of detailed filed reports which the Act requires to be made public. Labor-Management Reporting and Disclosure Act of 1959, §§ 203(a) (2), (b), 205(a, c), 29 U.S.C.A. §§ 433 (a) (2), (b), 435(a, c); Labor Management Relations Act 1947, § 302 as amended 29 U.S.C.A. § 186.

4. Labor Relations ⇐23

That section of Labor-Management Reporting and Disclosure Act exempting from reporting requirements those services of person by reason of giving advice to employer, representing employer before any court or administrative agency or partcipating in collective bargaining on behalf of employer is not as broad as the reporting requirements of Act itself. Labor-Management Reporting and Disclosure Act of 1959, § 203(b, c), 29 U.S.C.A. § 433(b, c).

5. Labor Relations ⇐23

Section of Labor-Management Reporting and Disclosure Act relating to employer's right to make views known to employees grants full right to employer

to voice, either directly or through agents including attorneys, views protected by statute relating to rights of employers, but if the statements are made by agents the reports must be filed. Labor-Management Reporting and Disclosure Act of 1959, § 203(f), 29 U.S.C.A. § 433(f); National Labor Relations Act, § 8(c) as amended 29 U.S.C.A. § 158(c).

6. Labor Relations ⇐23, 132

Section of Labor-Management Reporting and Disclosure Act exempting from required report by an attorney any information which was lawfully communicated to attorney by client in course of legitimate attorney-client relationship comes into play only when a report is required to be filed by provisions of Act. Labor-Management Reporting and Disclosure Act of 1959, § 204, 29 U.S.C.A. § 434.

7. Labor Relations ⇐23

Notwithstanding section relating to protection of attorney-client relationship, partners engaged in private practice of law on behalf of four employer-clients were required by the Labor-Management Reporting and Disclosure Act, with respect to the persuader activities in which they engaged, to file reports which must include clients' names and fees, if any, received from any persuader arrangements as well as a description of the general nature of activities they undertook pursuant to such arrangements, and if a single fee included both persuader and nonreportable nonpersuader activities entire fee must be reported with perhaps an appropriate explanation and allocation. Labor-Management Reporting and Disclosure Act of 1959, § 204, 29 U.S.C.A. § 434.

8. Labor Relations ⇐23, 132

Labor-Management Reporting and Disclosure Act dealing with attorney-client relationship discloses a legislative intent to make relationship roughly parallel to the common-law attorney-client privilege. Labor-Management Reporting and Disclosure Act of 1959, § 204, 29 U.S.C.A. § 434.

9. Witnesses ⇐217

The common-law attorney-client privilege belongs to client and it is not intended to protect the attorney.

10. Witnesses ⇐198(2)

Common-law attorney-client privilege cannot be invoked to prevent disclosure of client's name or fees actually paid.

11. Witnesses ⇐205

Common-law attorney-client privilege protects the disclosure of confidential information only.

12. Labor Relations ⇐23, 132

By its terms, section of Labor-Management Reporting and Disclosure Act relating to attorney-client relationship may be invoked only by the attorney. Labor-Management Reporting and Disclosure Act of 1959, § 204, 29 U.S.C.A. § 434.

13. Labor Relations ⇐23

Attorneys' performance of persuader activities on behalf of four employer clients did not require that they file annual reports covering all labor relation services including those rendered to clients for whom attorneys undertook no persuader activities. Labor-Management Reporting and Disclosure Act of 1959, §§ 203(b, c, f), 204, 29 U.S.C.A. §§ 433(b, c, f), 434.

14. Constitutional Law ⇐90
Labor Relations ⇐8

Labor-Management Reporting and Disclosure Act construed to require report by attorneys with respect to employer clients for whom they engaged in persuader activities does not infringe on attorney's constitutional rights including that of free speech. Labor-Management Reporting and Disclosure Act of 1959, §§ 203(b, c, f), 204, 29 U.S.C.A. §§ 433(b, c, f), 434; U.S.C.A.Const. Amend. 1.

15. Statutes ⇐47

Contention of attorneys in declaratory judgment action that Labor-Management Reporting and Disclosure Act reporting provisions were void for vagueness was without merit in view of fact that action was not a criminal prose-

cution for willful failure to report and attorneys' conduct clearly was that of the persuader type within the reporting requirements of Act. Labor-Management Reporting and Disclosure Act of 1959, §§ 203(b, c, f), 204, 29 U.S.C.A. §§ 433(b, c, f), 434.

16. Declaratory Judgment ⊂=68

Declaratory relief ought not to be based on academic, theoretical or hypothetical situations which might arise in the future.

Robert C. McDiarmid, Alan S. Rosenthal, Attys., Dept. of Justice, Washington, D. C., for appellant.

P. D. Thomson, D. P. S. Paul, Miami, Fla., for appellees.

Before PHILLIPS,* JONES and BROWN, Circuit Judges.

JOHN R. BROWN, Circuit Judge:

This appeal from a summary declaratory judgment, S.D.Fla., 1964, 236 F. Supp. 22, 40 N.Y.U.L.Rev. 366 (1965), holding that Appellees, partners engaged in the practice of law, have no duty under §§ 203(b), (c), (f), 204 of the Labor-Management Reporting and Disclosure Act of 1959 [LMRDA], 29 U.S.C.A. §§ 433(b), (c), (f), 434 (1958) ed. Supp. V) [1] to file any report covering any of their activities during 1960 and 1961 on behalf of their Employer clients, presents a question of first impression as to the construction of these statutory provisions, the impact of the common-law at-

* Of the Tenth Circuit, sitting by designation.

1. The pertinent portions of § 203 are as follows:

"(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly—

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

(c) Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

* * * * *

(f) Nothing contained in this section shall be construed as an amendment to, or modification of the rights protected by [§ 8(c) of the National Labor Relations Act]."

Section 204 provides:

"Nothing contained in this chapter shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of this chapter any information which was lawfully communicated to such an attorney by any of his clients in the course of a legitimate attorney-client relationship."

torney-client confidential communication privilege on such construction, and the constitutionality of the provisions as construed. We reverse in part, affirm in part, and remand. In short, we hold that the evidence—viewed, as it must be on summary judgment, most favorably to the Government—clearly shows that Appellees have engaged in "persuader" activities[2] on behalf of four employer-clients which must be reported under the 30-day and annual reporting requirements of § 203(b) and which are not exempt from these requirements by virtue of §§ 203(c), (f), or 204. However, contrary to the position taken by the Government, we conclude that the statute does not require Appellees to include in their annual reports a statement of receipts from and disbursements on behalf of other clients for whom they performed only nonpersuader labor relations activities in regard to which no 30-day report is required. As so construed and applied, the reporting requirements of § 203(b) are constitutional.

I

This suit was initiated by the Appellees in the District Court for a declaratory judgment that they were not subject in any manner to the reporting requirements of § 203(b) of the LMRDA. The Government counterclaimed seeking an injunction requiring Appellees to comply with the Act.

The Government contended that pursuant to arrangements with four of their clients,[3] Appellees had engaged in persuader activities and that within 30 days of each such arrangement they were required to report the terms and conditions thereof. Furthermore, the Government contended that under § 203(b) the Appellees were required to file annual reports as to each fiscal year within which payments were received pursuant to those agreements, and that these reports had to include a statement of receipts from, and disbursements on behalf of, all clients to whom Appellees had rendered any kind of labor relations services or advice, including but not limited to the four clients for whom Appellees had performed persuader activities. According to the Government, attorneys *qua* attorneys are not exempt from the reporting requirements and must file a 30-day report as to each persuader agreement. An attorney who confines his activities to those enumerated in § 203(c) need not file any report, but once he undertakes on behalf of any client persuader activities not within the scope of § 203(c), he must not only file a 30-day report covering these activities, but must file an annual report covering even those activities described in § 203(c). And he must do so as to all clients. The Government's construction of the Act is that the § 203(c) exemption applies solely to "who" must report rather than to "what" must be reported. If an attorney engages in persuader activities which are not exempt by § 203(c), this triggers the necessity for him to report all his labor relations activities on behalf of all his clients. Finally, the Government contended that neither § 203(f) nor § 204 exempt the Appellees from the reporting requirements of the Act. Section 204, in contrast, to § 203(c), limits "what" must be reported, not "who" must report, for it comes into play only once a report is required to be filed. And even then, it only exempts the attorney from reporting confidential communications within the traditional scope of the attorney-client privilege. According to the Government, the information required by his official report forms would not trespass on this privilege. As to § 203(f), there is simply no modification of the employer's rights under § 8(c) of the LMRA by requiring his attorney to report on labor relations activities.

2. By "persuader activities" we mean all those activities an object of which is either to persuade employees within the meaning of § 203(b) (1) or to supply an employer with information within the meaning of § 203(b) (2).

3. L. D. Plante, Inc.; Plant City Steel Corp.; Speed Sprayer Plant, John Bean Division, Food Mach. & Chem. Corp.; Guild Indus. Mfg. Corp.

The Appellees, on the other hand, did not deny that their activities on behalf of the named clients were those of a "persuader" or within the literal terms of § 203(b). Instead, they vigorously insisted that their activities were confined to those listed in § 203(c) because they were all things which a lawyer professionally and ethically might properly do in connection with, and in furtherance of, representation of their clients in administrative, judicial or collective bargaining proceedings. Furthermore, since these activities constituted a well-recognized part of the practice of labor law, they were exempted by virtue of § 204. And finally, Appellees attacked the Government's construction of the Act as unconstitutionally abridging their clients free-speech rights and their attorney-client privilege, the latter especially if they were required to report all nonpersuader activities on behalf of clients who hired them to do no persuader acts.

With the lines of contention thus clearly drawn, the Government, over many obstacles, sought by pretrial discovery to factually establish the types of activities it alleged Appellees undertook on behalf of their four named clients. Introduced into evidence by the Government were many, many pages of depositions, requests for admissions and their answers, interrogatories and their answers, stipulations, etc. Appellees, however, apparently content to rely on their position that, regardless of the precise nature of their activities, they were not, as a matter of law, subject to the reporting requirements of the Act, introduced little, if any, evidence to contradict the factual assertions of the Government or the evidence introduced in support of those assertions. Insisting then, as they now do, that the depositions presented by the Government are irrelevant, the deposition proceedings were often a frustrating experience in the effort of discovery. Time and time again, at the taking of the depositions, the Appellees objected to the Government's questions as violative of the attorney-client privilege, as irrelevant and immaterial, as leading, as calling for a conclusion of the witness. Question after question, they repeated the same objection. All in all, the lawyers did more talking than the deponents. If, as Appellees now assert, the deponents' testimony was confused, unsure, and vague, the Appellees are certainly partly responsible for this state of things, for the deponents could scarcely get a word in edgewise. The Government's requests for admissions, motions for production of documents, and motion to compel one of Appellees' partners to answer on deposition met with the same kind of stubborn resistance. And many of Appellees' objections to these requests were sustained by the Court on the ground that the requests were irrelevant and immaterial—a result, we may add, which was consistent with the Court's concept of controlling substantive principles which we hold to have been erroneous. Although the Government now complains of these rulings, many of which we agree are of doubtful propriety, our view of this appeal makes decision thereon unnecessary.

Neither need we pass on the Government's more serious complaint that the trial Court ruled on Appellees' motion for summary judgment without allowing it to complete its discovery and without ever definitively ruling on a number of its motions for discovery. For in any case, before completing discovery, the Government likewise moved for summary judgment stating the belief that it was so entitled on the basis of the evidence of record, even without the further discovery sought. The Government was at least half right. Construing the evidence most favorably to the Government,[4] we conclude that the trial Court erred in granting summary judgment to Appellees as to their duty to report persuader activities. It does not follow, however, that the Court erred in not granting the Government's motion. As to it, much may well turn out on remand

4. 3 Barron & Holtzoff, Federal Practice & Procedure § 1235, at 138–40 (1958 Wright rev.).

to be established as a matter of law under the principles we announce. But it is better administration that the trial Court examine it in the light of such principles and then determine just what is so established and what remains for resolution by the trier of fact.

II.

In granting Appellees' motion for summary judgment, the District Court purported to accept the Government's version of Appellees' activities, 236 F.Supp. at 25, and to resolve all factual disputes in favor of the Government, 236 F.Supp. at 28. However, the District Court summarized these facts in such a general way that it is impossible to tell whether this was really so. The Court below summarized them in such a general fashion as to mask the real nature of Appellees' persuader activities. Because these facts vividly portray these activities and are so essential to the applicability of the Act, we deem it appropriate to describe in some detail Appellees' activities on behalf of the four named clients.

L. D. Plante, Inc.

In 1960, Appellees represented L. D. Plante, Inc., and Paul Saad, an attorney associate in the firm and an agent of Appellees, performed certain services for that company. During a labor dispute arising out of a unionization drive [5] Paul Saad, on at least two occasions, spoke to groups of employees during working hours. At one meeting, held in Mr. Plante's office, Saad, introduced as Plante's attorney, discussed the union that the employees were trying to form. Saad advised the four employees present that, under certain conditions, the Company would have the right to fire any employees who went on strike and that he would recommend that it do so. Saad also told the employees that, if they interfered with the railroad serving the Company, they could be put in the federal penitentiary. He also pointed out the benefits the Company was giving. At a second meeting, many of the plant employees were assembled to hear Mr. Saad. Saad discussed what the union would mean to those who joined it and what the employees would stand to gain and what they would stand to lose.[6] He raised the issue of strikes and what they would mean to the employees, and when the Company could replace employees on strike.[7]

Plant City Steel Corp.

In 1956 a local of the Boilermakers filed a petition for an election at Plant City. The election was held in July 1957, and won by the Boilermakers. Thereafter, in November 1957, Appellees, attorneys for Plant City, notified the Boilermakers that it was intending to

5. In February, the United Packinghouse Workers filed a petition for a representation election, and on March 7, 1960, a Notice of Representation Hearing was issued. On March 30, the union filed an unfair labor practice charge against L. D. Plante Inc.

6. These sworn answers to Appellee's interrogatories for summary judgment purposes raised fact questions as to Saad having made these remarks:
(a) If the union succeeded the employees would lose the benefits they had already gained.
(b) If the Company had to bargain with a union everything would "start from scratch."
(c) He reminded the employees of the benefits they were then receiving.

7. The employee-deponents who heard Saad were unanimously of the opinion that he was trying to persuade them from joining the Union. One said that "we were being politely asked to vote against the Union" and that "they were trying to dissuade us from using Union membership." Another felt that Saad "was trying his best to make everybody think that they had better benefits right then than they would have had if we went union." Appellees themselves admit that Saad's "talks to said emloyees were designed and intended to influence and persuade said employees against voting in favor of" the Union.

Following the activities of Saad, a second unfair labor practice charge was filed against Saad and Plante. These charges were never tried but were disposed of by a posting order under a consent agreement which expressly disclaimed any admission that the acts were done or constituted an unfair labor practice.

test the NLRB certification in court, and thus Plant City would not bargain.

While the Boilermakers case was pending,[8] the Steelworkers began a union organizing campaign among the same employees of Plant City, in the summer or fall of 1960.

Granville M. Alley, Jr., an Appellee, Glenn L. Greene, Jr., and Paul A. Saad, both associates in the firm and agents of Appellees, rendered services to Plant City during 1960–1961. In 1960, Saad and Greene attended group meetings of Plant City employees. Saad spoke to the employees assembled at those meetings. The foreman of one of the four departments of Plant City in late 1960 was directed to split his work force and to send half of the force at a time for a meeting. The men were to sit in chairs facing the speakers and the foreman was to sit so that he could see the men's faces, so that he could report the expressions on their faces as the lawyers asked them questions.[9] Saad was introduced by a company vice president as a company attorney. The meeting lasted from 35 minutes to three quarters of an hour and Saad did most of the talking. Employee attendance at this meeting was compulsory. Saad told the employees that it would be a year after the Boilermakers case, note 8, supra, was concluded before any new organizational activity could be carried out,[10] that the company was paying its attorneys a large sum of money each year and that if there were no organizational drive that money could be in the employees' pay checks. Saad also told the employees that they could lose jobs over trying to organize the union. Saad also discussed the cost of dues and said that the employees might not gain anything by joining a union.[11]

As had his activities at Plante, Saad's efforts at Plant City left no doubt in the minds of the employees who heard him that his purpose was to dissuade them from joining the Union.[12] Similarly, they resulted in an unfair labor practices proceeding before the Board.[13]

Speed Sprayer Plant

Late in 1960, a union conducted an organizational drive among Speed Sprayer's employees. During 1960 and 1961, Appellees and Donald M. Hall, an associate in the firm and agent of Appellees, rendered services to Speed Sprayer and during this period Hall appeared and spoke at several meetings with employees. At a meeting, held early in November or late in October 1960, one

8. The NLRB found Plant City guilty of a refusal to bargain and filed a petition for enforcement of its order with this Court. We remanded the case to the Board for further proceedings, NLRB v. Plant City Welding & Tank Co., 5 Cir., 1960, 281 F.2d 688 and on October 16, 1961, the Board reconsidered its earlier decision and revoked the certification of the Boilermakers on technical grounds, 133 NLRB 1092.

9. At several times during the meeting, Saad took notes, presumably of the employees' questions or responses.

10. We note in passing the Government's assertion that this so-called "legal advice" was erroneous.

11. In answers to interrogatories, the Appellees admit that virtually all of these remarks were made by Saad at the meeting.

12. The foreman testified that the purpose of Saad's speech was "to discourage the employees from joining the union." Two employees likewise testified. They also testified that after Saad left it was impossible to get union cards signed since the employees were afraid to talk about the Union.

13. In May, 1961, the Union filed an unfair labor practice charge against Plant City and Granville Alley alleging, among other things, that the comments made by Saad, but mistakingly attributed to Alley, constituted threats of economic reprisals in violation of § 8(a) (1). The Trial Examiner sustained some of the charges against Plant City, but dismissed the charges against Alley when several witnesses admitted that it was Saad, rather than Alley, who had made the speech. A motion to substitute Saad and the Appellees' law firm was denied as untimely. 1961, 138 N.L.R.B. at 842–43. The Board affirmed the Trial Examiner, 1962, 138 N.L.R.B. 839, and this Court affirmed the Board, NLRB v. Plant City Steel Corp., 5 Cir., 1964, 331 F.2d 511.

employee testified that Hall "told us that the union couldn't do anything for us and we had fair wage—we was getting fair wages and if we joined the union we would be just paying dollars and could be taxed money and some of the people was going to strike and we could be made to support them until they go back to work." A witness, called by the Appellees, testified that Hall "made it plain, you know, that the company could do more for us than the union." At another meeting, Hall talked about what the union was not good for and stated that the union was out after the employees' money. He also talked about the Kohler strike which had gone on for several years, and told the employees that they too could be thrown out on the street. He had talked about benefits which the Company gave and the union could not—Blue Cross and Blue Shield, paid holidays, and picnics. At a third meeting Hall talked on "What Can The Union Do For You." Hall told the employees that the Company could give them more benefits than the union could. At several of these meetings Hall, in addition to talking about the union, passed out to the employees a booklet entitled "What *Are* Union Promises." [14]

One of the employees, who had been called by the shop authorities to attend a meeting during working hours at which Hall had spoken against the union, was later visited by Hall, in the company of a foreman, at his home. This visit occurred in the evening, without any invitation from the employee.

Hall opened the conversation. Talking about what the union could do and could not do and generally speaking against the union, Hall told his reluctant host about an incident in which a truck driver who was a union man had broken into the home of another man's wife. He further talked about the cost of a union and that Speed Sprayer could have given its employees a raise if it were not for the union.

Another employee was also visited at his home by Hall, shortly before the election, in the company of a foreman. This visit was also in the evening and also without invitation. Hall asked the employee whether he thought things "would be all right now" that a foreman had been changed and whether he was "still going for the Union."

Guild Industries.

In June 1960, organizational efforts at Guild were begun by the Carpenters Union. On August 3, 1960, the union filed an unfair labor practice charge against Guild which was disposed of by an informal agreement.[15]

A petition for election was filed by the union on October 7, 1960, and on October 26, 1960, a charge was filed by the union alleging that Guild had deprived an employee of overtime work because of his union activity. A hearing was held on the petition for an election on October 28, 1960. On December 15, an amended charge was filed by the union in the unfair labor practice matter, and an additional charge was filed, alleging a discriminatory discharge of another employee. Saad, on or about November 25, 1960, interrogated employees of Guild individually, after first swearing them, with the testimony being recorded by a court reporter. Saad's interviews "tore the plant" and upset the employees, some of whom felt that Saad's purpose had been to determine whether they had been supporting the union with the effect of

14. On the cover of this booklet was the legend:

"VOTE *NO*
NO UNION
NO STRIKE
NO DUES"

15. Guild agreed to post a notice promising that:

"We will not interrogate our employees concerning their membership in or support of FLORIDA STATE COUNCIL OF CARPENTERS * * * We will not threaten to close our plant * * * We will not threaten to refuse to recognize and bargain with the * * * union * * *."

The agreement was signed by Saad for Guild.

discouraging them from joining the union. On December 16, the union filed another charge, this time against Paul A. Saad as well as Guild, alleging that "by interrogating, threatening, and spying, and by other acts and conduct [Guild] and its attorney, interfered with, restrained and coerced its employees." On December 29, 1960, the NLRB Regional Director set aside the informal settlement previously reached and issued a complaint against the company and Saad.

Shortly thereafter, in early January 1961, a second interrogation of the employees took place. They were called into the office and asked questions by members and employees of Appellees' firm and then sworn and given questionnaires to fill out by the attorneys. On January 20, 1961, the prior complaint was amended to charge that Guild, by its attorneys, had on January 9–13, 1961, interrogated employees concerning their own union membership, activities and sympathies, and/or concerning the union membership, activities, and sympathies of other employees.

As to both instances of interrogation, the Trial Examiner found against Guild and Saad. 1961, 133 NLRB 1721, 1724. The Board affirmed the decision of the Trial Examiner. 1961, 133 NLRB 1719, amended 1962, 135 NLRB 971.

As to the first, reported, interrogation by Saad individually, this Court affirmed the decision of the Board as to Guild, but declined to hold Saad because "our holding in Lindsay [N.L.R.B. v. Lindsay Newspapers, Inc., 5 Cir., 1963, 315 F.2d 709, which also involved Appellees' law firm] came long after this interrogation, and was not a basis for either charging or holding Saad. For that reason, and because it was a question of first impression, we will not apply it to hold Saad here." N.L.R.B. v. Guild Indus. Mfg. Corp., 5 Cir., 1963, 321 F.2d 108, 112–113.

As to the second interrogation, we concluded:

> The line between proper preparation of a defense in a proceeding of this type and conduct prohibited by the Act is fine indeed. In the main, much of what transpired in this interrogation was privileged on the basis of proper preparation but in sum, because of the posted company notice, the fact of the unsworn oral examination and the sworn questionnaire on the same questions, coupled with the anti-union animus present, it went beyond the pale of privilege. The Board was justified in holding it violative of § 8(a) (1) of the Act in that it constituted conduct tending to discourage union membership and activity. The employees might well have thought that this was one of the legal means which the company had promised to use. Although not necessary, this finding too buttressed the order of the Board as it related to the 8(a) (1) violation.

321 F.2d at 114.

III.

From all these facts the District Court drew three common threads: (1) the Appellees were at all times representing the employers "on legal matters having to do with administrative or judicial proceedings or collective bargaining negotiations;" (2) in each instance, "the employees * * * involved were specifically advised and knew that the attorneys were acting as the attorneys for the respective companies;" (3) in each case, "the matters under discussion and the activities of the * * * attorneys were activities of a legal nature performed in the course of the attorney-client relationship." 256 F.Supp. at 26. With these broad, hardly descriptive, factual generalizations we do not take issue. We do, however, with the Court's conclusion that each, in and of itself, made the Act inapplicable and relieved Appellees of any duty to report. Though purporting to "rationalize the provisions of Sections 203 and 204 of the Act into a coherent whole," id. at 28, the Court concluded that each of its factual generalizations when matched to a separate provision of the Act removed Appellees' duty.

Primary reliance was placed on the exemption provisions, §§ 203(c) and 204. First, the Court held that Appellees were "expressly exempted" from the reporting requirements because of the "explicit provisions" of § 203(c) which were "obviously designed to exempt the activities of attorneys performing services *as attorneys in connection with* judicial or administrative proceedings." Id. at 30. (Emphasis added.) Second, § 204 excludes from the reporting requirements "activities occurring in performance of the *normal attorney-client relationship*." Ibid. (Emphasis added.) Third, the exemptions of §§ 203(c) and 204 aside, the reporting requirements of § 203(b) were designed to reach only undisclosed activities, not the open activities of persons who the employees expressly knew were acting on behalf of, and being compensated by, employers. 236 F.Supp. at 33–34. A careful consideration of the legislative history of the LMRDA and a candid reading of the literal language of the relevant sections convinces us that each of these legal conclusions is erroneous.

IV.

At the outset it is important to note that neither the Appellees nor the District Court ever asserted that the activities of Appellees were not those of a "persuader." Indeed, such an assertion would be impossible in light of facts set out in Part II. Without belaboring the point, we think it clear beyond doubt that Appellees pursuant to arrangements with their four employer-clients undertook, and, in fact, performed, activities with the object—and it is difficult to conceive of a case where the object could be more "direct"—of persuading the employees not to join the unions.[16] And though this is enough, as to Plant City (foreman watching expressions of employees at meetings and Saad taking notes), Speed Sprayer (Hall asking employee whom he visited at home whether he was still in favor of union), and Guild (interrogations of employees as to their union activity), it also seems clear that at least some of Appellees' activities had the object of supplying their clients with information concerning the union activities of the employees. These are the acts of a "persuader."

[1–3] But the assertion is made that § 203(b) was not intended to reach disclosed persuasion. It is true, of course, that the McClellan Committee,[17] in which the LMRDA had its genesis, was primarily concerned with management-hired labor spies and undisclosed middlemen who engaged in espionage and deceptive persuasion.[18] But it is likewise true that from the first abortive predecessor of the LMRDA, the Kennedy-Ives Bill of 1958,[19] on through the finished legislative product, Congress did not attempt to outlaw these abuses by so-called "labor relation consultants." Rather the sanction was to expose them to publicity.[20] And it is clear that this exposure

16. The Government contends that the judicial determination that Appellees' interrogation at Guild constituted interference, restraint, and coercion within the meaning of § 8(a) (1) of the Labor Act, is conclusive—either under the doctrine of collateral estoppel or res judicata—on the lesser finding of persuasion required by § 203(b). Although we do not believe that such judicial determinations are irrelevant and immaterial, as contended by Appellees, it is unnecessary for us to pass on the Government's contention. The judicial determination of coercion aside, the evidence in this record belies any assertion that these activities of Appellees were not those of a persuader.

17. The Select Committee on Improper Activities in the Labor or Management Field, 86th Congress.

18. S.Rep.No. 1139, 86th Cong., 2d Sess. 855–58 (1960); S.Rep.No. 621, 86th Cong., 1st Sess. 119–20, 591, 671–72, 686 (1959); S.Rep.No. 1417, 85th Cong., 2d Sess. 184, 218–19, 298–99, 326–30 (1958).

19. S. 3974, 85th Cong., 2d Sess. (1958).

20. See generally Beaird, Reporting Requirements for Employers and Labor Relations Consultants in the Labor-Management Reporting and Disclosure Act of 1959, 53 Geo.L.J. 267, 269–70 (1965).

was to include not only the fact that the consultant was paid by management, but why he was paid, how much he was paid, and the practices he engaged in to earn his pay.[21] The aim was disclosure, but the method almost uniformly adopted to attain the end was reporting of these details, not the mere verbal acknowledgment by the consultant that he was hired by management as a persuader, a fact few employees would be too insensitive to grasp in its absence. Congress certainly knew how to exempt from the reporting requirements information which was already disclosed,[22] but it did no such thing as to the reporting requirements of § 203(b). The District Court wrongly concluded that disclosure, which according to its rationale would exempt nonlawyers as well as Appellees, is a substitute for what Congress expressly required—reporting.[23]

With § 203(b) thus covering Appellees activities on behalf of the four clients, the question as to the scope of the exemptions provided by § 203(c) and § 204 remains. In this regard the Act is something less than a model of statutory clarity. The problem with § 203(c) lies in the phrase "by reason of." What is its grammatical function? Its meaning? The Government gives the section this reading: nothing shall require any person to file a report by reason of his giving advice to or representing an employer before any court. Thus, if an attorney does more than give advice or represent his client before a court or agency, he is required to report. Making "by reason of" modify "report," the Government's reading emphasizes that "giving advice and representing" are the only exempted activities. Appellees would read the section in its normal grammatical sequence: nothing shall require a person to file a report covering services by reason of his giving advice to, or representing before a court, etc., an employer. With "by reason of" modifying services, Appellees would assign it the meaning "because of" or "in connection with." Thus, Appellees contend that any activities taken in connection with or arising out of representing or agreeing to represent clients are nonreportable. They, thus, emphasize that all their activities

21. In its report of the Kennedy-Ives Bill, the Senate Committee on Labor and Public Welfare made the following comments:
"The committee believes that employers should be required to report their arrangements with these union-busting middlemen. * * * [L]arge sums of money are spent in organized campaigns on behalf of some employers for the purpose of influencing and affecting employees in the exercise of their rights * * *. Sometimes these expenditures are hidden behind committees or fronts. *Sometimes they are made in the open.* * * * *In any event,* * * * they should be exposed to the light of publicity *in the same fashion* that all union financial disbursements will be exposed."
S.Rep.No. 1684, 85th Cong., 2d Sess. 7–8 (1958) (Emphasis added). We merely note in passing that there is no provision in the Act which exempts Unions from reporting their disbursements merely because they were disclosed when made.

22. For example, § 203(a) (2) requires employers to report all payments made to employees for persuading other employees "unless such payments were contemporaneously or previously disclosed to such other employees." No such exception appears in § 203(b).

23. In a very real practical sense reporting differs from mere contemporaneous disclosure. Though many of a persuader's reportable activities may be proper, some may be improper. Some may constitute unfair labor practices, as NLRB v. Guild Indus. Mfg. Corp., supra, illustrates, some may be unethical, some may be illegal (see LMRDA § 505), some may provide the impetus for additional legislation. While disclosure to the employee being persuaded that this is the mission of the identified "persuader" may attenuate the persuasion, the object of Congressional protection transcended the immediate employees. Unions, the NLRB, professional associations (e. g., Bar Associations), and the Congress were to have the benefit of the detailed filed reports which the Act requires to be made public. §§ 205(a), (c); 29 C.F.R. §§ 406.9, 2, 4(a) (2) (ii).

took place "while" administrative, judicial, or collective bargaining proceedings were occurring with regard to their employer-clients. They argue that any labor lawyer worth his salt would have done as much for his clients, that all of their activities were within the legitimate practice of labor law.

Whether Congress considered directly arguing to employees the economic, rather than legal, consequences of unionization, passing out antiunion propaganda, interrogating employees as to their union sympathies, visiting employees homes to persuade them to vote against the union, etc., within the "legitimate practice of labor law," it is clear that Congress meant for this type of activity to be reported.

V.

When Congress convened in 1959, a number of bills had been prepared for introduction which were directed toward the elimination of the evils which had been revealed by the McClellan Committee hearings. The first to be introduced was S.505, introduced by then Senator Kennedy, Senator Ervin, and others, which was introduced January 20, 1959. I Leg. Hist. (NLRB) 29–79;[24] 105 Cong. Rec. 871.

S.505 provided in connection with labor consultants, essentially as does the Act as passed, that every consultant who undertakes activities when an object is, directly or indirectly, to persuade employees or supply an employer with information, shall file a report. The report required, however, was an annual one only. § 103(b), I Leg. Hist. (NLRB) 40–41. Section 103(c) of that bill was equivalent to Section 203(c) of the Act. I Leg. Hist. (NLRB) 41–42.

S.748, the Administration bill, was introduced on January 28, 1959, by Senator Goldwater and others. I Leg. Hist. (NLRB) 80–150; 105 Cong. Rec. 1259. Section 206 of S.748 required an employer to report annually payments made to any person for the performance of an act whereby "(i) any employee may be subjected to restraint, coercion, or interference in his exercise of rights guaranteed by Section 7 of the [NLRA] * * *, or (ii) information with respect to the exercise of any rights referred to in clause (i) is obtained or is sought to be obtained from any employee and furnished without his knowledge and consent to his employer." I Leg. Hist. (NLRB) 102, 103. No separate report was required from the person doing the act.

Other bills introduced early in the Session included H.R. 4473, introduced by Congressman Barden on February 16, 1959, which, in § 209(d), specifically exempted attorneys from the requirement that persons providing labor relation consultant services file a report of every transaction involving coercing, restraining or interfering with the rights of employees, etc., imposed by § 209(b). I Leg. Hist. (NLRB) 230–33; 105 Cong. Rec. 2431.

On March 25, 1959, Senator Kennedy, together with Senator Ervin and the other sponsors of S.505 and others, introduced S.1555, which was favorably reported by the Committee on Labor and Public Welfare on April 14, 1959. I Leg. Hist. (NLRB) 338–96, 397–515; 105 Cong. Rec. 5137, 5877. As reported, S.1555 provided, in § 103(b), in virtually the exact language now enacted as § 203(b), that certain activities created an obligation to report. I Leg. Hist. (NLRB) 351; 105 Cong. Rec. 5976. The reporting requirement was somewhat different, however. Only an annual report had to be filed, which had to contain (1) the person's name, "(2) receipts of any kind from employers on account of labor relations, advice or services, designating the sources thereof, (3) disbursements of any kind, in connection with such services and the purposes thereof; and (4) a detailed statement of the terms of such agreement or arrange-

24. The legislative history of the Act has been compiled by the National Labor Relations Board and by the Department of Labor. They are cited herein as "Leg. Hist. (NLRB)," and "Leg.Hist. (Labor)," respectively.

ment." Section 103(c) of the bill was the same as § 203(c) of the Act. I Leg. Hist. (NLRB) 351–52, 105 Cong. Rec. 5976. The Committee Report noted, in describing the purpose of the bill, that:

> In some instances, the matters to be reported are not illegal and may not be improper. But only full disclosure will enable the persons whose rights are affected, the public and the Government to determine whether the arrangements or activities are justifiable, ethical, and legal.

S.Rep. No. 187, 86th Cong., 1st Sess. 5 (1959), U.S.Code Cong. and Admin. News 1959, p. 2321, I Leg. Hist. (NLRB) 401. In explaining the effect of § 103(b) and (c) of the bill (now § 203 (b) and (c) of the Act, so far as here material), the Committee noted:

> "Under section 103(b) every person who enters into an agreement with an employer to persuade employees as regards the exercise of their right to organize and bargain collectively or to supply an employer with information concerning the activity of the employees or labor organizations in connection with a labor dispute would be required to file a detailed report. An attorney or consultant *who confines himself to giving legal advice, taking part in collective bargaining and appearing in court or administrative proceedings* would not be included among those required to file reports under this subsection. Specific exemption for *persons giving this type of advice* is contained in subsection (c) of section 103."

Id. at 12 U.S.Code Cong. & Admin. News 1959, p. 2328; I Leg. Hist. (NLRB) 408; Leg. Hist. (Labor) 506. (Emphasis added.) Further, as to the purpose of § 103(c), the Report stated that "[t]he committee did not intend to have the reporting requirements of the bill apply to attorneys and labor relations consultants *who* * * * *do not engage in activities of the types listed in section 103*(b)." Id. at 40, U.S.Code Cong. & Admin. News 1959, p. 2356; I Leg. Hist. (NLRB) 436. (Emphasis added.)[25]

25. Professor Archibald Cox's testimony before the Senate Subcommittee is revealing:

> I am familiar with three kinds of expenditures which should be publicized through compulsory reporting:
>
> * * * * *
>
> (2) Expenditures to a labor relations consultant or similar middle man in exchange for his undertaking to influence employees in the exercise of the rights of self-organization and collective bargaining or to furnish information concerning their activities. Payments for advice are proper. If the employer acts on the advice it may influence the employees. But when an employer hires an independent firm to exert the influence, the likelihood of coercion, bribery, espionage, and other forms of interference is so great that the furnishing of a factual report showing the character of the expenditure may fairly be required.

Hearings before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare on Labor-Management Legislation, 86th Cong., 1st Sess., 128 (1959). Also revealing is the fact that in reporting S. 3974, the Kennedy-Ives bill of 1958, which, in § 103(b) was essentially the same as S. 505, the Committee noted:

> "Section 103(b) requires a labor-relations consultant to file a financial report upon his labor-relations activities if he undertakes to influence or affect employees in the exercise of the rights guaranteed by the National Labor Relations Act or to provide an employer with paid informer or any agency engaged in the business of violating such rights. *Since attorneys at law* and other responsible labor-relations advisers *do not themselves engage in influencing or affecting employees* in the exercise of their rights under the National Labor Relations Act, *an attorney* or other consultant *who confined himself to giving advice, taking part in collectively bargaining and appearing in court and administrative proceedings* nor [sic] would such a consultant be required to report. Although *this would be the meaning of the language of sections 103(a) and (b) in any event*, a proviso to section 103 (b) guards against misconstruction."

S.Rep.No. 1684. 85th Cong., 2d Sess., 8–9; Leg.Hist. (Labor) 390–91. (Emphasis added.)

The minority views expressed in the report called attention specifically to the fact that attorneys were covered by the bill, and noted that the minority was of the view, later adopted in the House Bill, that no disclosure of any activities of an attorney which fell within the scope of the legitimate practice of law was warranted, and that there should be no disclosure of the fact of the attorney-client relationship or the financial details thereof. It noted that the minority had offered amendments in committee to effect its views on this topic, but that the majority had rejected these amendments. Id. at 82, U.S.Code Cong. & Admin. News 1959, p. 2393; I Leg. Hist. (NLRB) 478–79; Leg. Hist. (Labor) 514–15.

During Senate debate, Senator Goldwater proposed two amendments. The first, to add a definition of "Labor relations expert, adviser or consultant," specifically excluded an attorney engaged in the practice of law when first proposed. 105 Cong. Rec. 6555–56; II Leg. Hist. (NLRB) 1161; Leg. Hist. (Labor) 221–22. Senator Goldwater himself, however, modified his proposed amendment to remove the exclusion of attorneys. Ibid. In clarification of the proposed amendment, Senator Kennedy asked:

> "What effect would the Senator's amendment have on the requirement that attorneys be subject to the law when they are acting as Labor relations consultants?"

Senator Goldwater replied "they would be subject to the law." As so modified, the amendment was accepted by Senator Kennedy. Ibid.

The second amendment offered by Senator Goldwater was what is now Section 204 of the Act. Senator Goldwater gave his reason for the amendment: "I know that if I were involved in a situation in which an attorney was representing me, *and a report had to be made,* I would not want all of the intimate details of communications between the attorney and me to become public property." (Emphasis added.) Senator Kennedy said, "There is no doubt in my mind that the bill which was originally drafted by lawyers adequately protected them. Therefore, I do not feel that the amendment * * * is wholly necessary." As Senator Dirksen put it, in the exchange which followed, "I think it is important to anchor the fundamental reason or purpose for protecting this relationship * * * —the safeguard of the lawyer-client relationship was designed not to safeguard or protect the lawyer, but the client." With this understanding, the amendment was accepted by Senator Kennedy. 105 Cong. Rec. 6558, II Leg. Hist. (NLRB) 1163–64, Leg. Hist. (Labor) 534–36.

S.1555 passed the Senate on April 25, 1959, with no further amendments here relevant. 105 Cong. Rec. 6745; II Leg. Hist. (NLRB) 1257, I Leg. Hist. (NLRB) 531–32, 577.

The House of Representatives adopted a different approach. The House Committee on Education and Labor reported H.R. 8342 on July 30, 1959. I Leg. Hist. (NLRB) 687; 105 Cong. Rec. 14853. In § 203, H.R. 8342 provided for reporting by labor relations consultants keyed to activities which interfered with, coerced, or restrained employees in the exercise of their rights. I Leg. Hist. (NLRB) 710–13. It also provided, in § 204, that:

> "Nothing contained in this Act shall be construed to require an attorney who is a member in good standing of the bar in any State, or any client of such an attorney, to include in any report required to be filed pursuant to the provisions of this Act any information which is confidential between the attorney and such client in the course of a legitimate attorney-client relationship, including but not limited to the existence of the relationship of attorney and client, the financial details thereof, or any information obtained, advice given, or activities carried on by the attorney within the

scope of the legitimate practice of law."

I Leg. Hist. (NLRB) 713.[26]

After discussion on the floor of the House, an amendment by Congressman Landrum to substitute the text of H.R. 8400 for the text of 8342 was proposed, 105 Cong. Rec. 15702, II Leg. Hist. (NLRB) 1645, and adopted 105 Cong. Rec. 15859, II Leg. Hist. (NLRB) 1691–92. As thus amended, the bill was passed by the House on August 14, 1959, 105 Cong. Rec. 15891, II Leg. Hist. (NLRB) 1693–1702. The relevant sections of H.R. 8400 were exactly the same as those of H.R. 8342 as reported. I Leg. Hist. (NLRB) 640–44, 710–14.

In conference, of course, the Senate approach to the problem was accepted and that of the House rejected, and the provisions of the consultant reporting section of the Act are essentially those of S.1555. See Conference Report, H.R. Rep. No. 1147, 86th Cong., 1st Sess. 32–33, U.S.Code Cong. & Admin. News 1959, p. 2503, I Leg. Hist. (NLRB) 936–37. The conference bill was adopted by the Senate on September 3, 1959, 105 Cong. Rec. 17919, II Leg. Hist. (NLRB) 1452–53, and by the House on September 4, 1959, 105 Cong. Rec. 18127, 18153, II Leg. Hist. (NLRB) 1738–39.

VI.

When we unravel these legislative threads, several patterns are sharply revealed. The first is that Congress, from the beginning to the end of the legislative process, was acutely concerned with the effect the reporting requirements would have on attorneys. Even in the House, where the Committee bill required the reporting only of activities which were intended to interfere with, coerce, and restrain employees, rather than those which were intended to persuade, and where the exemption of § 204 relieved both the attorney and his client from reporting any "activities carried on by the attorney within the scope of the legitimate practice of law," attempts completely to exempt attorneys (e. g., Congressman Barden's bill) were rejected. And in the Senate, Senator Goldwater was forced to abandon his attempt to exempt "attorneys engaged in the practice of law" and to concede that attorneys would be subject to the law when "they are acting as labor relations consultants."

The second thing clear is that the Conference Committee, in all respects save one, adopted the approach of the Senate in S.1555. While the House bill required the reporting of interference, coercion, and restraint, the Act requires the reporting of any persuasion.[27] While the

26. This provision is almost identical to that recommended by the American Bar Association. See Hearings on Labor-Management Reform Legislation Before a Joint Subcommittee of the House Committee on Education and Labor, 86th Cong., 1st Sess. 343 (1959) (statement of Harry L. Browne). The Committee reporting H.R. 8342 thus rejected Congressman Teller's proposal in H.R. 7811, 86th Cong., 1st Sess., § 707, that would have protected only against disclosure of "any privileged information."

The supplementary views attached to the House Committee Report, H.R.Rep. No. 741, 86th Cong., 1st Sess. 83 (1959), U.S.Code Cong. & Admin.News 1959, p. 2424, I Leg.Hist. (NLRB) 759, 841, noted that "the House committee has made reporting by employers and labor relations consultants the merest sham." Id. at 85, U.S.Code Cong. & Admin.News 1959, p. 2484; I Leg.Hist. (NLRB) at 843.

27. That is, of course, with the exception of those activities covered by § 203(c). The House bill contained no equivalent to § 203(c) for the obvious reason that the activities covered by that section could hardly be said to have the object of interference, coercion, or restraint. On the other hand, one can readily conceive of a situation where the giving of advice could be said to have the object of direct or indirect persuasion. At first the Department of Labor took the position that the reporting requirements covered an attorney's undertaking to draft speeches, letters, and other written material which are to be delivered or disseminated by the employer to employees for the purpose of persuading them with regard to the exercise of their rights.

House bill exempted the reporting by either attorney or client of any "activities carried on by the attorney within the scope of the legitimate practice of law," the Act exempts attorneys alone from reporting only "information * * * lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship." The only exception where the House approach was somewhat adopted by the Conference Committee is § 203(f). The Senate bill contained no equivalent provision.[28]

[4] The third thing that is clear is that the exemption of § 203(c) is not, as Appellees contend, "as broad as the reporting requirement itself." Almost consistently, the purpose of § 203(c) was explained not to carve out a broad exemption[29] of activities which would otherwise be covered by § 203(b), but to make explicit what was already implicit in § 203(b), to guard against misconstruction of § 203(b).[30] Generally it was felt that the giving of legal advice to employers was something inherently different from the exertion of persuasion on employees,[31] and § 203(c) was inserted only to remove from the coverage of § 203(b) those grey areas where the giving of advice and participation in legal proceedings and collective bargaining could possibly be characterized as exerting indirect persuasion on employees, see note 27, supra, not to remove activities which are directly persuasive but indirectly connected to the giving of advice and representation.

For the purposes of this case, it is unnecessary for us to ascertain the precise location of the line between reportable persuader activity and nonreportable advice, representation, and participation in collective bargaining.[32] We conclude only that not everything which a lawyer

See Beaird, supra, at 294. Upon reconsideration, the Department conceded that such activities by attorneys, though admittedly intended to have a persuasive effect, came within the "advice" exemption of § 203(c). Donahue, Some Problems Under Landrum-Griffin, 1962 Proceedings of ABA Labor Relations Law Section 45.

28. Section 203(c) of H.R. 8400, the House committee bill, provided:

"Nothing contained in this Section shall be construed as an amendment to, modification of, *or limitation upon*, the rights protected by Section 8(c) of the National Labor Relations Act, as amended, *nor shall any person be required to file a report with the Secretary in regard to any matters protected by Section 8(c) of such Act.*" (Emphasis added.)

Section 203(f) of the Act eliminated the italicized words.

29. If the exemption from the activities covered by § 203(b) were broad, so would be the exemption from the reporting requirements, for § 203(c) pertains to all persons, not just to attorneys.

30. The Senate Report accompanying S. 1555 in explaining the effect of § 203(b) noted that "an attorney * * * who confines himself to giving legal advice, taking part in collective bargaining and appearing in court or administrative proceedings would not be included among those required to file reports under *this subsection*" (Emphasis added) and in explaining the purpose of § 203(c) noted that it exempted attorneys "who * * * do not engage in activities of the types listed in section 103(b) [now § 203(b)]." And the Committee Report accompanying the Kennedy-Ives bill of 1958 likewise explained that the exemption of an attorney "who confined himself to giving advice, taking part in collectively bargaining and appearing in court and administrative proceedings * * * would be the meaning of the language of sections 103(a) and (b) [203(a) and (b)] in any event" and that § 203(c) merely "guards against misconstruction." All this explanation indicates that § 203(c) was not intended to limit in any substantial manner the coverage of § 203(b).

31. See note 25, supra.

32. For instance, it has been suggested that the line be drawn between communication with the client and direct contact with the employees. "* * * [O]nly when the attorney has direct contact with certain persons, including employees, other than his client may he be required to file reports and make disclosures." Lang, Reporting Requirements in General, in SLOVENKO 369, 376. "* * * [T]he services ordinarily performed by an attorney for his labor clients will

may properly, or should, do in connection with representing his client [33] and not every activity within the scope of the legitimate practice of labor law is on the nonreportable side of the line. At least some of Appellees' activities on behalf of each of their four clients—no matter how traditional, ethical, or commendable—were those of a persuader.

[5] It is likewise unnecessary for us to determine the precise meaning of § 203(f).[34] In view of the fact that the Act provides a considerably narrower proviso than the one contained in the House bill, see note 28, supra, we cannot accept Appellees' assertion that the protection provided by § 203(f) is "as broad as language can possibly make it." Appellees argue that requiring them to report their persuasive arrangements interferes with their clients' unfettered right under § 8(c) of the NLRA to express "any views, arguments or opinions" to employees. This interpretation of § 203(f) renders the reporting requirements of § 203(b) meaningless, since it is difficult to conceive of any kind of persuader activities which do not consist of expressing the employer's views and opinions and since § 203(f) applies to employers and nonlawyer persuaders as well as to attorneys. There is nothing

entail no reporting obligations on the part of either the attorney or client. It is only when the lawyer departs from his customary functions of advising and representing in legal proceedings that he may have to report. If he should undertake personally to speak to his client's employees and urge them not to join a union which is trying to organize them, he would have to file the report called for by section 203(b)." Loomis, Employer and Consultant Reporting Requirements, in SLOVENKO 391, 399. "It is clear that if a lawyer undertakes on behalf of a client to address a meeting of the client's employees, or to write a letter to the employees over the lawyer's signature, urging the employees not to sign union cards being distributed at the client's door, or not to vote for a union in the coming representation election, the lawyer has engaged in reportable activity. * * * A reasonable construction of 'advice' would hold it applicable to all activities of the lawyer in which it is contemplated that the client will be the ultimate implementing actor and in which the client retains the power to accept or reject the activities of the lawyer. As a corollary, advice would not include activities in which the lawyer or his agent implement the activity by interposition between the client and his employees, * * *."

Bernstein & Sullivan, Lawyer Reporting and the Attorney-Client Privilege, in SLOVENKO 410, 413–14.

33. It is significant to note that the various legislative committees explained the § 203 (c) phrase "representing * * * such employer before any court, administrative agency, or tribunal of arbitration" as consisting of "appearing in court or administrative proceedings." See note 29, supra. Whether Congress intended only to exempt the actual appearance—and the Government does not contend that the exemption is so limited—there is no indication that the exemption extends to any and every act of representation merely because it happens to be contemporaneous with, or remotely connected to, judicial or administrative proceedings.

34. The Department of Labor interprets this subsection as having no effect on the reporting requirements:

"While nothing contained in section 203 of the Act shall be construed as an amendment to, or modification of the rights protected by, section 8(c) * * *, activities protected by such section of the said Act are not for that reason exempted from the reporting requirements of this part and, if otherwise subject to such reporting requirements, are required to be reported. Consequently, information required to be included in Forms LM–20 and 21 [the 30-day and annual report forms] must be reported regardless of whether that information relates to activities which are protected by section 8(c) of the National Labor Relations Act, as amended."

29 C.F.R. § 406.6 (1966). See generally Bureau of Labor-Management Reports, U.S. Dep't of Labor, Technical Assistant Aid No. 4, Guide for Employer Reporting (1960); Bureau of Labor-Management Reports, U.S. Dep't of Labor, Technical Assistance Aid No. 6, Employer and Consultant Reporting (1963). For a defense of this interpretation, see Beaird, supra, 53 Geo.L.J. at 288–90. For a criticism, see Iserman, The Secretary of Labor's Regulations for Employers, in SLOVENKO 404–07.

in the legislative history to indicate that § 203(f) was intended to have this enervating effect. It is enough to say that Appellees cannot escape all reporting requirements simply by virtue of § 203 (f). Section 203(f) grants full right to the employer to give voice, either directly or through agents including attorneys, to views protected by § 8(c). But if those statements are made by agents, the reports must be filed.

[6] Likewise, it is unnecessary at this time to determine the precise reach of § 204. It is clear from both the legislative history and the language of this section that its provisions come into play only once a report is "required to be filed." Here we merely decide that a report must be filed and do not attempt to delineate its contents. The Government argues that neither the 30-day nor annual reports called for by § 203(b) require the Appellees to reveal any information which was communicated to them by their clients in the course of the attorney-client relationship, and that it is quite willing, at the appropriate time, to respect a proper claim of privilege predicated on § 204. .

[7] But since any such reports to be meaningful must include as a bare minimum the name of the client, the terms of the arrangements, and the fees, we deem it appropriate to indicate our views as to what information § 204 does *not* prevent the disclosure of. As to the four clients on whose behalf Appellees performed persuader activities, we conclude that in spite of § 204 Appellees must report their names and the fees received for any persuader arrangements.[35] They must also describe the general nature of the activities they undertook pursuant to such arrangements.[36]

[8–12] Several factors compel this interpretation. The first is a legislative intent to make § 204 roughly parallel the common-law attorney-client privilege. By the weight of authority, such privilege (1) belongs to the client and is not intended to protect the attorney;[37] (2) cannot be invoked to prevent disclosure of the client's name or the fees actually paid;[38] (3) protects the disclosure of confidential information only.[39] The second is that in spite of this general intention to "anchor," as Senator Dirksen put it, the purpose of § 204 in the protection of the client, not the lawyer,

35. It may often be the case—and it may be so determined here on remand—that an attorney will in a single agreement for a single fee undertake to perform both persuader and nonpersuader activities. In such a case, we believe that the entire fee must (but perhaps with appropriate explanation and allocation) be reported in the annual report as payments are made. This gives meaning to the requirement of § 203(b) that the annual report contain a statement of "receipts of any kind from employers on account of labor relations advice or services." To the extent that an attorney must report fees for nonpersuader activities on behalf of a client for whom he also performs persuader activities, this interpretation also adopts with respect to such clients, at least, the Government's position that the performance of persuader activities triggers the necessity to report nonpersuader activities otherwise exempted by § 203 (c).

36. The terms of an agreement or arrangement, without more, might well be considered a privileged "communication" from the client to the attorney. But where, as here, the agreement has been executed, partially or completely, the nature of the activities actually performed by the attorney can hardly be characterized as a "communication" from his client. In this case Appellees are required to report the general nature of what they did, not what they were "told" to do. Without intimating decision, we would point out that if agency of the attorney for acts performed is denied by the employer-client the privilege as to instructions, express or implied, might not prevent inquiry.

37. McCormick, Evidence § 96, at 195 (1954); 8 Wigmore, Evidence § 2321 (McNaughton rev. 1961).

38. McCormick, supra, § 94, at 188–89; 8 Wigmore, supra, § 2313 at 609.

39. McCormick, supra, § 95; 8 Wigmore, supra, § 2311.

§ 204 by its terms may be invoked only by the attorney. Section 203(a) still requires the employer-client to report all persuader arrangements. This can only mean one of two things. Either Congress implicitly intended to honor the employer-client's invocation of the privilege as a barrier to reporting—for it would be meaningless to allow the attorney to keep secret what his client must report—or Congress intended § 204 to protect only that information which the *employer* is not required by § 203(a) to report. We prefer the latter explanation as being most consistent with the legislative utterances which accompanied the adoption of § 204.[40] We conclude, therefore, that as to each persuader arrangement, the Appellees must report the name of their client, the receipts and disbursements pursuant to such arrangements, and the general nature of their activities on behalf of these clients. These activities cannot be considered as confidential information communicated from the clients to Appellees.[41]

VII.

Thus far the Court is of a single mind. At this point a division arises whether the report must include services performed for nonpersuader clients.

[13] In holding that Appellees need not file even the 30-day reports on behalf of their four clients, the District Court found it unnecessary to pass on the Government's contention that the performance of persuader activities on behalf of these clients triggered the necessity to file annual reports covering all labor relations services including those rendered to clients for whom Appellees undertook no persuader activities. Nevertheless, the District Court alluded to this contention to exhibit the Government's "strained interpretation of the entire Act" and found it to "play havoc with the obvious purpose of Section 203(c) (as well as Section 204)." 236 F.Supp. at 34 n. 4. The Government urges that this dicta is contrary to the subsequent holdings of the Fourth Circuit in Douglas v. Wirtz, 4 Cir., 1965, 353 F.2d 30, cert. denied, 1966, 383 U.S. 909, 86 S.Ct. 893, 15 L.Ed.2d 665, and another District Court in Price v. Wirtz, N.D.Tex., appeal pending before another panel of this Court [No. 22630]. In both of these cases the attorneys conceded that they had performed persuader activities and agreed to file the 30-day report as to such activities, the sole question being whether they also had to file annual reports as to labor relations services to clients for whom they performed no persuader activities. In both cases it was held that they did. The majority of this Court disagrees and with deference declines to follow the holding of the Fourth Circuit.[42]

A contrary conclusion would mean that when an employer retains an attorney solely to perform nonpersuader activity (e. g., giving advice or representation in

40. Senator Goldwater in proposing § 204 expressed the fear that "If I were involved in a situation in which an attorney was representing me, and a report had to be made, I would not want all of the intimate details of communications between the attorney and me to become public property." We believe the Senator was referring to a situation in which he had retained the attorney to perform nonpersuader activities in view of his concession in another context that attorneys performing as persuaders would be subject to the reporting requirements. This interpretation of § 204—that it protects from disclosure by persuaders of nonpersuader activities performed for employers who are not required to report—supports the majority's conclusion in Part VII, infra.

41. Especially is this true in light of Appellees' repeated assertion that they were at all times performing these activities openly on behalf of their four clients.

42. The dissenting member of the Court basing the dissent from this part (Part VII) of the Court's opinion on the reasons stated in Douglas v. Wirtz, supra, would hold that the performance of persuader activities requires an annual report of all labor relations advice and services on behalf of all clients. This is the price, albeit perhaps a high one, for lawyers engaging in persuader activities.

court proceedings) and when that attorney subsequently engages in persuader activities on behalf of another employer, the attorney's nonpersuader arrangement with the first employer would be subject to complete disclosure. In the Court's view the purposes of the reporting requirements, as revealed in the legislative history, do not justify such a harsh result.

First, it is true that § 203(c) can be read, as the Government does, to deal only with those activities which do not trigger the necessity for filing a report rather than with those activities which need not be covered in a report which is otherwise required to be filed. But in explaining this section, the Senate committee report on S.1555 noted that it "[p]rovides that no employer nor any other person shall be required to file a report *covering* the giving of advice by such person to such employer, representing the employer before any court * * *." S.Rep.No.187, 86th Cong., 1st Sess. 40 (1959), U.S.Code Cong. & Admin. News 1959, p. 2356, I Leg. Hist. (NLRB) 436. (Emphasis added.) Second, S.1555, as reported, required a single annual report containing (1) the name of the persuader, (2) receipts of any kind on account of labor relations advice and services, (3) disbursements of any kind in connection with such services, and (4) a detailed statement of the terms of such agreement. There was no indication that items (2) and (3) were to pertain to agreements other than those referred to in item (4).[43] On the floor S.1555 was amended to require a 30-day rather than an annual report. In Conference, it was agreed to require both a 30-day and an annual report, with items (1) and (4) being required in the 30-day report and items (2) and (3) in the annual one. It does not appear that the annual report was to cover agreements not covered by the 30-day report, the sole concern being the timing of the reports. Third, the primary purpose of § 204 was to protect employer-clients, who do not enter persuader agreements and who thus do not have to report under § 203 (a), from having their affairs disclosed by attorneys who, as persuaders for other employers, are obligated to report. See note 40, supra, and accompanying text.

On the other hand, of course, is the fact that the potent weapon to Congress was glaring publicity. One might argue that Congress thought an effective way to discourage lawyers engaging in persuader activities was to disclose to the public intimate details of all of counsel's labor clients, both persuader and nonpersuader. In time clients who did not believe in such tactics would retain other counsel to achieve secrecy. The difficulty with this is that it does not distinguish between nonpersuader clients who do from those who do not know of the attorney's persuader work. Nor is it limited in point of time. A client could employ counsel at a time when the attorney performed no persuader work for anyone. And yet in the Government's reading, the first purposeful (i. e., non accidental) persuader work would trigger during the period the reports for all labor clients, new and old, aware or ignorant of these Congressionally discredited activities. We cannot believe that Congress could have intended to visit such consequences on such non involved employers.

VIII.

[14, 15] As thus construed, we conclude that the reporting requirements do not infringe on any of Appellees' constitutional rights. Their free-speech, first amendment challenge is foreclosed by United States v. Harriss, 1954, 347 U.S. 612, 74 S.Ct. 808, 98 L.Ed. 989. In view of the fact that this is not a criminal prosecution for wilful failure

43. The language "receipts of any kind on account of labor relations advice or services" seems to have reference to receipts for nonpersuader activities undertaken pursuant to persuader agreements, rather than to receipts for activities undertaken pursuant to wholly nonpersuader agreements. See note 35, supra.

to report and that Appellees' conduct clearly was that of a persuader, their contention that the reporting provisions are void for vagueness is equally meritless.

[16] In reversing the judgment below, we do not attempt to blueprint, or even indicate, what action and relief will be appropriate upon remand. Having our view of the relevant statutory provisions and controlling principles, the District Court will have considerable leeway in disposing of Appellees' prayer for a declaratory judgment, the Government's request for an injunction, and in framing any injunctive orders to be entered. After the Government is allowed to complete its discovery, it may well be that as to a number of decisive issues, if not all, it will be entitled to full or partial relief by summary judgment, including appropriate injunctive, declaratory (or both) orders. On the other hand, as a minimum, Appellees are entitled to a declaratory judgment that they need not report activities on behalf of clients for whom they performed no persuader activities. To the extent persuader activities for one or more clients is not made out as a matter of law (on summary judgment or otherwise) Appellees are likewise free within the limits of F.R. Civ.P. 52(a) to urge the trier of fact to find that no persuader activities have been performed. Relief would have to be adopted accordingly.[44]

Reversed and remanded.

JONES, Circuit Judge.

I concur in the result and in so much of the opinion as supports the result.

44. We would, as we often have, emphasize that declaratory relief ought not to be based on academic, theoretical or hypothetical situations which might arise in the future. City of Houston v. Standard-Triumph Motor Co., 5 Cir., 1965, 347 F.2d 194, 198 and cases cited in note 9; Corsican Productions v. Pitchess, 9 Cir., 1964, 338 F.2d 441, 443; Shull v. Pilot Life Ins. Co., 5 Cir., 1963, 313 F.2d 445, 447.

With the infinite variables of day to day labor relation problems it would be risky to try to spell out in detail what is, or is not persuader activity, just what should, or should not be reported, etc. This might unduly subject the employer-clients (or counsel) to the lurking threat of contempt or, on the other hand, unduly restrict public authorities in the enforcement of the Act and the fulfillment of Congressional policies.

Robert P. O'BRIEN, Appellant,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY.

No. 15908.

United States Court of Appeals
Third Circuit.

Argued Oct. 6, 1966.

Decided Jan. 5, 1967.

Action by pedestrian against his automobile insurer, under uninsured motorist coverage, for personal injuries sustained by pedestrian when struck by an uninsured automobile. The United States District Court for the Eastern District of Pennsylvania, John Morgan Davis, J., 251 F.Supp. 318, entered judgment for insurer on the pleadings, and pedestrian appealed. The Court of Appeals, Forman, Circuit Judge, held that under Virginia law, and under uninsured motorist endorsement wherein insurer agreed to pay all sums which insured shall be legally entitled to recover as damages from owner-operator of an uninsured automobile because of bodily injuries sustained by insured, insured was required to first obtain judgment against the uninsured motorist before an action against insurer could be maintained.

Affirmed.

Insurance ⇐612(4)

Under Virginia law, and under uninsured motorist endorsement wherein insurer agreed to pay all sums which insured shall be legally entitled to recover as damages from owner-operator of an uninsured automobile because of bodily

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

BELL HELMETS INC.

Employer

and

Case No. 21-RC-14829

INTERNATIONAL CHEMICAL WORKERS
UNION, AFL-CIO

Petitioner

REPORT ON OBJECTIONS

Pursuant to a Stipulation for Certification upon Consent Election approved by the Regional Director for Region 21 on November 2, 1976, an election by secret ballot was conducted on December 16, 1976, under the direction and supervision of the Regional Director for Region 21, among the employees of the Employer, in the unit agreed appropriate for the purpose of collective bargaining. 1/ The tally of ballots which was served upon the parties immediately following the election showed the following results:

Approximate number of eligible voters	201
Void ballots	0
Votes cast for Petitioner	82
Votes cast against participating labor organization	102
Valid votes counted	184
Challenged ballots	7
Valid votes counted, plus challenged ballots	191

The challenged ballots are insufficient in number to affect the results of the election. On December 22, 1976, the Petitioner (hereafter the Union) filed timely objections to the election, a copy of which was timely served upon the Employer. Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned, after reasonable notice to the parties to present relevant evidence, has completed an investigation of the objections and hereby issues his report thereon.

The Union's objections allege that the Employer interfered with the employees' rights by making untrue antiunion statements at a time that the Union was unable to prepare a rebuttal.

The Union later clarified the objections and stated that what it specifically objected to were statements made by the Employer's management consultant, Dr. John R. Van De Water, during a campaign meeting held by the Employer on Monday, December 13, 1976. Statements allegedly made by Van De Water to which the Union specifically objected were statements to the effect that: If a plant down the street went on strike, that the employees at Bell would also have to go on strike; if they did not walk the picket line, employees would be fined; and the International Union could make Bell employees invest money in the International Building Fund.

The investigation disclosed that on the afternoon of Monday, December 13, 1976, 3 days prior to the election scheduled for December 16, 1976, the Employer had a campaign meeting at which its representative, Van De Water, spoke. In support of its objections, the Union presented several employee witnesses who had attended the meeting.

1/ Included: All production and maitenance employees, shipping and receiving employees and truckdrivers employed by the Employer at its facilities located in Long Beach and Norwalk, California.
Excluded: All office clerical employees, professional employees, guards and supervisors as defined in the Act.

According to these witnesses, Van De Water stated he was there as a representative of the Employer and he would explain some things about the Union or tell them some facts about the Union. The statements allegedly made by Van De Water that were remembered by the witnesses are as follows:

1. During a strike the Employer could call in replacements and the employees could be permanently replaced.

2. The Union could raise the employees wages as well as increase them.

3. If the Union wanted to build a new building, it could raise the employees dues to pay for the building.

4. If the employees were on strike and the Union called a strike at another employer, the Union could require the employees to picket at the other employer's plant.

5. At one plant the Union dues were increased from $8 to $28 per month.

6. In some cases the Union could get employees fired if they didn't pay their dues or cases in which employees would not be allowed to work until their dues were paid.

7. If another plant in the same local union went on strike, the employees of that plant might get money from the Employer's employees strike fund.

8. The Union could make the employees go on strike by fines or assessments.

When, as here, an election is challenged on grounds of campaign propaganda, the Board will invalidate an election because of inaccurate campaign propaganda only where the propaganda (1) substantially misrepresents a material fact; (2) is timed so that the other party is prevented from making an effective reply; (3) comes from a party who had special knowledge of the true facts; and (4) relates to matters not within the independent knowledge of the employees so that they are unable effectively to evaluate the propaganda. 2/

Viewing the evidence in support of the objections in light of the foregoing, and assuming that Van De Water made the statements alleged, it is concluded that his speech to the employees did not contain material misrepresentations but contained, at best, minor distortions of the facts insufficient to have a significant impact on the election. 3/

Assuming, arguendo, that Van De Water's speech contained material misrepresentations, the investigation disclosed that at a meeting of employees on Tuesday evening, December 14, 1976, at which the Union's representative, Pearsey Devereaux, was present, Devereaux was informed by employees of the content of Van De Water's speech. At this meeting Devereaux specifically countered statements allegedly made by Van De Water. Additionally, at a meeting of employees on Wednesday, December 15, 1976, held by the Union at the lunch hour on a vacant lot across the street from the Employer's plant, Devereaux again discussed the contents of Van De Water's speech with employees. Thus, the Union had notice of the speech in ample time to respond. 4/ Additionally, there was no reason for the employees to believe that Van De Water possessed intimate knowledge of the Union's affairs so that the employees sought to be persuaded would be expected to attach added significance to his assertions. 5/ Accordingly, for all the foregoing reasons, it is recommended that the Union's objections be overruled.

2/ Hollywood Ceramics Co., 140 NLRB 221.
3/ Hollywood Ceramics Co., supra.
4/ Diamond Electronics Division of Arvin Systems, Inc., 225 NLRB No. 27; Kalvar Corporation, 204 NLRB 805; Montana Lumber Sales, Inc., 185 NLRB 46.
5/ Hollywood Ceramics Co., supra.

Conclusion

The undersigned having recommended that the Union's objections to the election be overruled, and the results showing that a majority of the valid votes has not been cast for the Union, further recommends that a Certification of Results of Election be issued. 6/

DATED at Los Angeles, California, this 8th day of February, 1977.

Wilford W. Johansen

Wilford W. Johansen, Regional Director
National Labor Relations Board
Region 21

6/ Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. Exceptions must be received by the Board in Washington by February 21, 1977.

The CHAIRMAN. Our last witness will be Mr. Roy M. Brewer who, I understand, is appearing individually in favor of the nomination.

He has been a member of organized labor for five decades. He has held union office in the International Sound, Cinetechnicians, and Television Engineers Local No. 695 and was president of the Nebraska State Federation of Labor.

Mr. Brewer, we welcome you to the committee. We are happy to have you with us, and we will be very interested in listening to your testimony at this time.

STATEMENT OF ROY M. BREWER, TARZANA, CALIF.

Mr. BREWER. Thank you, Mr. Chairman, and members of the committee.

I would like to say, as a preface to giving you my statement in view of the information that has been given to the committee, that I have been reasonably active in the southern California area and I have never heard any complaints against Mr. Van de Water of the nature that has been submitted here today.

I discussed the matter of his appointment with Mr. Jack Henning and others around him. As has been said, they had not heard of him.

It is a little baffling to me to feel that if the situation is as Mr. Donahue described it, if Mr. Van de Water had been active in actually going around to defeat unions, that would be known.

I know of some attorneys in Los Angeles who do that, and I have never known Mr. Van de Water to do it.

The CHAIRMAN. How long have you known Mr. Van de Water?

Mr. BREWER. I have known him since 1945.

The CHAIRMAN. You have actually known him almost 40 years.

Mr. BREWER. Yes.

I was away from the Los Angeles area for a period.

The CHAIRMAN. Have you known him well or is it just a passing acquaintance?

Mr. BREWER. Yes. I have known him well. I have known him as an associate. I have appeared before his classes. I have discussed labor problems with him many, many times.

If John Van de Water is antilabor, he has kept it effectively from me in my association with him. I do not believe he is, and that is why I have supported his candidacy and why I came here at my own expense to give the committee my best judgment on him and his qualifications.

I still believe from my knowledge of him that he would not be an impartial Chairman. He would be fair.

The CHAIRMAN. He would be an impartial Chairman.

Mr. BREWER. He would not be partial. He would be an impartial chairman and would decide the cases strictly on the law and the equities involved.

I have my statement here. Do you want me to read it?

The CHAIRMAN. We will put your full statement in the record at the completion of your oral testimony, Mr. Brewer, if it is all right with you.

I would just like to ask you a few questions.

Mr. BREWER. That will be fine.

The CHAIRMAN. Unless you would prefer him to read his statement, Senator Williams.

Senator WILLIAMS. No, Mr. Chairman.

The CHAIRMAN. You have had an opportunity to listen to Mr. Donahue's statement in opposition to Mr. Van de Water's nomination. You have indicated that in spite of Mr. Donahue's statement—and he is very responsible and a top-flight leader of the AFL-CIO and is a man I have a lot of respect for—you disagree that John Van de Water has an antiunion attitude.

Mr. BREWER. All I can say is that I have never known him to be antiunion. He has always tried to weigh the responsibilities of labor.

So far as I know, most of his time has been expended in order to smooth out the relationships between management and labor and to make them run smoothly and not to eliminate them.

I have never known of any case of my own knowledge that he has done that. I have never had any labor representative in southern California tell me that he has.

The CHAIRMAN. You have known him for almost 37 years. You have had intimate contact with him as a labor union leader.

Mr. BREWER. Yes, sir.

The CHAIRMAN. Do you consider him as a friend?

Mr. BREWER. Yes, sir.

The CHAIRMAN. And you do not know of any instances where he has been unfair or partial?

Mr. BREWER. No; I do not. If I had, I would have taken a different attitude. I have never known of it, and I do not believe it.

The CHAIRMAN. And even though you have heard and have seen Mr. Donahue put into the record today articles that explain to management how they can avoid unionization, or at least how they can deal with unions, in spite of that you still would maintain that John Van de Water is a fair, decent, and impartial man who is neither prolabor nor antilabor.

Mr. BREWER. That is my position.

The CHAIRMAN. Would you consider him an objective person in this field?

Mr. BREWER. I certainly would.

The CHAIRMAN. Are you aware that he has worked with union people, as well as nonunion people?

Mr. BREWER. Yes.

The CHAIRMAN. And that he has worked with unions as well as management?

Mr. BREWER. Yes.

The CHAIRMAN. And that he has advised both in his career.

Mr. BREWER. Yes.

The CHAIRMAN. Like Betty Murphy who, of course, has advised both unions and employers and who was an eminent Chairman of the Board for a number of years.

Mr. BREWER. Yes.

The CHAIRMAN. Do you know of any specific facts that might reflect unfavorably on Mr. Van de Water's nomination or is all of your experience a favorable experience?

Mr. BREWER. The only facts that I have heard about him actually participating in any campaign to prevent unionization or to help decertification of a union I heard here today.

The CHAIRMAN. You are aware that some very honest and impartial and decent lawyers who are retained by management are asked to give advice on both union organizing and union decertification. You are aware of that are you not?

Mr. BREWER. Yes, sir.

The CHAIRMAN. And you understand that is a legitimate and perhaps responsible fact of their legal careers?

Mr. BREWER. That is right.

The CHAIRMAN. And that there is nothing wrong with giving advice to management or unions—unions on how to organize and how to avoid decertification and management on how to protect themselves from unionization if that is their choice, within the law, and how to decertify if that is the choice of their employees within the law. You find nothing wrong with that do you?

Mr. BREWER. No.

The CHAIRMAN. Have you ever had any indication in your 37 years of friendship and business relationship and experience with Mr. Van de Water that he acted unethically, illegally, or improperly?

Mr. BREWER. I have never known of any such instance.

The CHAIRMAN. And nothing that you have heard here today would change your opinion on that?

Mr. BREWER. As I say, I could only get——

From the reading of this, I could not evaluate it very thoroughly.

What I heard here today certainly did not sound like what I knew of John Van de Water.

The CHAIRMAN. And it did not change your opinion.

Mr. BREWER. No.

The CHAIRMAN. Because you know him so well.

Mr. BREWER. That is right.

The CHAIRMAN. We appreciate your coming. I think great weight has to be placed upon your opinion, because of your long activity in the union movement and your long relationship with Mr. Van de Water.

I personally will place great weight on what you have said here today. You may be the most significant witness here today, although all witnesses are important.

In the labor movement, there are very few people who rise to the dignity of Thomas Donahue. He is a top-notch labor union leader and, frankly, a man whom I admire very much. However, I admire you also.

Senator Williams?

Senator WILLIAMS. Thank you, Mr. Chairman.

Mr. Brewer, I have read your statement. Yours is an impressive life of significant accomplishment.

Did you serve with Wayne Morris on the War Labor Board. Do you remember him?

Mr. BREWER. No. I worked on the Wage Stabilization Board.

Senator WILLIAMS. Before that, I thought I saw the——

Mr. BREWER. You mean the War Production Board.

I was here in Washington.

Senator WILLIAMS. In World War II.

Mr. BREWER. Yes.

Senator WILLIAMS. Did you ever run into Senator Morris at that time?

Mr. BREWER. I knew of him very well, but I did not have a personal relationship with him.

Senator WILLIAMS. He was a tiger on this committee.

Mr. BREWER. Yes. I admired him very much, Senator.

Senator WILLIAMS. He was a great man.

And yours is an impressive statement. You have come a long way.

How did you happen to come from Los Angeles for this hearing?

Mr. BREWER. I came because I wanted to see John Van de Water as Chairman of this Board, because I thought he would do a good job as Chairman. I think he is fair; he knows.

As I say, I still believe that John Van de Water is a man who would administer the law as effectively as any man you could find. I still believe that, and I believe it firmly.

Senator WILLIAMS. I was impressed with your statement which I just read that he was helpful to you when he was at UCLA back in the mid-1940's.

Mr. BREWER. Very much so.

Senator WILLIAMS. When you needed some advice, you got it from Mr. Van de Water.

Mr. BREWER. Yes, sir.

Senator WILLIAMS. While he was a professor?

Mr. BREWER. Yes, sir.

Senator WILLIAMS. I gather that was one of those pro bono things. You did not hire him as an attorney.

Mr. BREWER. No.

Senator WILLIAMS. He was just a friend giving you some advice in your work as labor leader?

Mr. BREWER. I spoke before his classes on quite a few occasions. In reciprocation, he assisted me in some of the problems which I had. I appreciated it.

Senator WILLIAMS. I agree with Senator Hatch. Yours is a very important statement for our record.

Thank you.

The CHAIRMAN. Thank you, Mr. Brewer. We appreciate your taking the time to come back here and appear before this committee. We are honored to have had you here.

Thank you so much.

Mr. BREWER. Thank you.

[The prepared statement of Mr. Brewer and additional material supplied for the record follows:]

STATEMENT

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS ROY M. BREWER.

MY RESIDENCE IS LOS ANGELES, CALIFORNIA.

I WAS BORN IN CAIRO (HALL COUNTY), NEBRASKA ON AUGUST 9, 1909.

I HAVE BEEN A MEMBER OF ORGANIZED LABOR FOR 54 YEARS. MOST OF THOSE YEARS I HAVE BEEN ACTIVE IN VARIOUS CAPACITIES AS A SPOKESMAN FOR ORGANIZED LABOR. AT THE PRESENT I AM SERVING AS A CONSULTANT AND AS A REPRESENTATIVE OF THE INTERNATIONAL SOUND, CINETECHNICIANS AND TELEVISION ENGINEERS LOCAL NO. 695, IN HOLLYWOOD, CALIFORNIA, A LOCAL UNION OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES. TODAY, HOWEVER, I DO NOT SPEAK OFFICIALLY FOR ANY LABOR GROUP. I SPEAK ONLY AS AN INDIVIDUAL--AS ONE WHO HAS DEVOTED MUCH OF HIS LIFE TO THE LABOR MOVEMENT.

I BECAME A MEMBER OF THE PROJECTIONISTS UNION IN 1927 AND IN 1932 I WAS ELECTED PRESIDENT OF THE NEBRASKA STATE FEDERATION OF LABOR. I SERVED 8 YEARS IN THIS CAPACITY. DURING WWII I SERVED IN THE OFFICE OF LABOR PRODUCTION OF THE WAR PRODUCTION BOARD IN WASHINGTON. IN 1945 I WAS APPOINTED INTERNATIONAL REPRESENTATIVE OF THE IATSE. I WAS ASSIGNED TO THE HOLLYWOOD OFFICE AND HEADED THAT OFFICE FOR 8 YEARS. THIS WAS AN IMPORTANT

POST, SECOND ONLY IN RESPONSIBILITY TO THAT OF THE INTERNATIONAL PRESIDENT. DURING THIS PERIOD I PARTICIPATED ACTIVELY IN THE AFFAIRS OF THE LOS ANGELES FEDERATION OF LABOR AND THE CALIFORNIA STATE FEDERATION OF LABOR. I WAS SELECTED TO SERVE AS ONE OF TWO LABOR MEMBERS OF THE WAGE STABILIZATION BOARD FOR THE SAN FRANCISCO REGION DURING THE KOREAN WAR. IN 1953 I RESIGNED MY POST WITH THE IATSE AND MOVED TO THE EAST WHERE I WORKED FOR 11 YEARS. IN 1967 I RETURNED TO LOS ANGELES. BETWEEN 1967 AND 1970 I SERVED AS DIRECTOR OF INDUSTRIAL RELATIONS FOR TECHNICOLOR, INC. IN 1972 I REJOINED THE STAFF OF THE IATSE AS AN INTERNATIONAL REPRESENTATIVE. IN 1977 I RETIRED FROM THE STAFF OF THE INTERNATIONAL AND ACCEPTED THE POST WHICH I NOW HOLD.

SHORTLY AFTER I WENT TO HOLLYWOOD IN 1945 I BECAME ACQUAINTED WITH JOHN VAN de WATER. I KNEW HIM THEN AS A POPULAR PROFESSOR OF LABOR LAW AT U.C.L.A. ON A NUMBER OF OCCASIONS I SPOKE BEFORE HIS CLASSES AT U.C.L.A., AS DID MANY OF MY COLLEAGUES IN THE LABOR MOVEMENT. MANY LABOR UNION LEADERS ATTENDED HIS CLASSES AT U.C.L.A.

DURING MY ASSIGNMENT IN HOLLYWOOD MANY TECHNICAL QUESTIONS WERE RAISED AS THE FILE OF THE NATIONAL LABOR RELATIONS BOARD WILL ATTEST. WHILE I NEVER PAID HIM FOR HIS SERVICES, I OFTEN CONSULTED WITH JOHN ABOUT THE LEGAL ISSUES WHICH CONFRONTED MY UNION. HE WAS ALWAYS WILLING TO ADVISE ME. DURING THIS SAME PERIOD HIS STATURE IN THE COMMUNITY GREW AND TODAY HE IS CONSIDERED TO BE A PROMINENT AUTHORITY IN THE FIELD OF LABOR RELATIONS.

IN LATER YEARS HE BEGAN TO DEVOTE MORE AND MORE OF HIS TIME TO THE ORGANIZATION OF AND THE PARTICIPATION IN LABOR SEMINARS. I HAVE, UPON OCCASION, PARTICIPATED IN THOSE SEMINARS.

AS A RESULT OF THESE CONTACTS OVER A PERIOD OF YEARS, I HAVE COME TO KNOW HIM VERY WELL. SINCE HIS APPOINTMENT I HAVE HEARD RUMORS THAT HE IS ANTI-LABOR. I HAD NEVER HEARD SUCH CHARGES AGAINST HIM BEFORE, AND I KNOW THAT IT IS NOT TRUE. WE HAVE DISCUSSED THE PROBLEMS OF LABOR AND THE EFFECTIVENESS OF THE MANY LAWS GOVERNING LABOR MANY TIMES. I KNOW HE BELIEVES FUNDAMENTALLY IN LABOR UNIONS AND THE PART WHICH THEY PLAY IN THE CONDUCT OF OUR FREE ECONOMIC SYSTEM AND THE NECESSITY FOR RESPONSIBILITY AND INTEGRITY ON BOTH SIDES OF THE BARGAINING TABLE.

HE IS EMINENTLY QUALIFIED FOR THE POST TO WHICH HE HAS BEEN APPOINTED. HE HAS A FINE SENSE OF FAIRNESS AND I AM SURE HE WILL ADMINISTER THE LAW IN AN EFFECTIVE AND IMPARTIAL MANNER AT ALL TIMES.

BECAUSE OF HIS RECENT EDUCATIONAL WORK, HE HAS BEEN SOMEWHAT REMOVED FROM THE ACTIVE FIELD OF LABOR RELATIONS. MANY OF THE CURRENT LEADERS HAVE NOT KNOWN HIM OR WORKED WITH HIM. BUT THOSE WHO HAVE--WITHOUT EXCEPTION--SPEAK HIGHLY OF HIM. AMONG THOSE WHO HAVE EXPRESSED THEIR SENTIMENTS TO ME ARE MR. MICHAEL RILEY, CHAIRMAN OF DISTRICT COUNCIL OF TEAMSTERS OF SOUTHERN CALIFORNIA, AND MR. WILLIAM DEMERS OF THE COMMUNICATIONS WORKERS OF AMERICA.

MOST PEOPLE WHO KNOW JOHN ARE FOND OF HIM BECAUSE OF HIS FAIRNESS AND HIS GREAT WARMTH AS A HUMAN BEING AND OF HIS LOVE FOR PEOPLE.

I THINK HE WILL MAKE A FINE CHAIRMAN AND I HOPE YOU WILL CONFIRM HIM BY THE UNANIMOUS VOTE OF THIS COMMITTEE. I THINK HE DESERVES IT. I THANK YOU FOR YOUR COURTESIES TO ME AND FOR THE OPPORTUNITY TO PRESENT THESE MATTERS TO YOU.

Communications Workers of America
AFL-CIO

1925 K Street, N.W.
Washington, D.C. 20006
202 785-6710

CWA

File 3.5
x 1.14

October 8, 1981

The Honorable Orrin G. Hatch
United States Senate
Washington, D. C. 20510

Dear Senator Hatch:

I have been advised that a letter from Mr. William C. Demers of Los Angeles, California has been received by the Committee and that it endorses the nomination of John R. Van de Water to be Chairman of the National Labor Relations Board.

Mr. Demers is a vice president of the Communications Workers of America in Southern California District 11 but he is not the official spokesman for this Union, so I must advise that his letter is a personal endorsement and not on behalf of this organization.

We, in CWA, join with our brothers and sisters in the AFL-CIO and urge that the U.S. Senate reject the nomination of John R. Van de Water to be Chairman of the National Labor Relations Board.

Sincerely,

Glenn E. Watts

American Society for Personnel Administration

WASHINGTON OFFICE:
1140 CONNECTICUT AVE., N.W.
SUITE 609
WASHINGTON, D.C. 20036
(202) 785-5599

September 29, 1981

The Honorable Orrin G. Hatch, Chairman
Committee on Labor and Human Resources
United States Senate
Washington, DC 20510

Dear Senator Hatch:

The American Society for Personnel Administration, representing more than 34,000 professionals in the field of human resources, strongly supports the nomination of John Van de Water as chairman of the National Labor Relations Board.

John has been a member of ASPA for many years, and is recognized as an eminently knowledgeable and distinguished individual in the personnel/industrial relations profession. We believe he is outstandingly qualified for the office to which he has been nominated.

Following the conclusion of its usual careful consideration of the nomination, ASPA urges the Senate to confirm Mr. Van de Water as chairman of the NLRB.

Yours very truly,

Jerry L. Sellentin

Jerry L. Sellentin, PhD, AEP
Chairman

OCT 15

INTERNATIONAL SOUND TECHNICIANS, CINETECHNICIANS
AND TELEVISION ENGINEERS
OF THE
MOTION PICTURE AND TELEVISION INDUSTRIES
LOCAL 695

Affiliated with
American Federation of Labor
California State Federation of Labor
Los Angeles Central Labor Council
Second District, I.A.T.S.E.

of the International Alliance of Theatrical Stage Employes
and Moving Picture Machine Operators of the
United States and Canada

JIM A. OSBURN
Business Representative

Office:
11331 Ventura Boulevard • Suite 201
Studio City, California 91604
985-9204 • 984-2081 • 877-1052

Mailing Address:
P.O. Box 1518
Studio City, California 91604

October 3, 1981

Senator Orrin G. Hatch
United States Senate
Senate Office Building
Washington, D.C. 20510

Dear Senator:

I wish to take this means of expressing to you my most sincere appreciation for the courtesies extended to me during my testimony before your Committee.

We have examined the document referred to by Tom Donahue and found it to be much different than it appeared to be.

I am enclosing a copy of a letter which I am sending to Senator Williams which sets forth in some detail my feelings on the matter.

Thank you again for your noble efforts.

Sincerely,

Roy M. Brewer

RMB:rm
Encl.

INTERNATIONAL SOUND TECHNICIANS, CINETECHNICIANS
AND TELEVISION ENGINEERS
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Studio City, California 91604

October 3, 1981

Senator Harrison A. Williams, Jr.
United States Senate
Senate Office Building
Washington, D.C. 20510

Dear Senator:

I want to sincerely thank you for the courtesies which you extended to me when I appeared before your Committee in support of Dr. Van de Water's confirmation as Chariman of the National Labor Relations Board.

I have examined the article which Mr. Donahue referred to in his very able and somewhat clever presentation to the Committee. The material which he used was taken out of context and of course withheld from his statement so that it could not be effectively answered at its hearing. In so doing, it seemed to me he was doing the very thing that he was complaining about. We found that this was not an article prepared by Dr. Van de Water as it appeared to be. It was made up by the editor of the booklet from material contained in a lecture given by Dr. Van de Water and excerpted and arranged by the editor to give the emphasis which he wanted it to have.

I hope you will find time, in your busy schedule, to read the article in toto. For your convenience I am enclosing a copy. If you find the time to read it I think you will

conclude as I have that as a whole, it reflects Dr. Van de Water's basic fairness and honesty rather than any bias. Is is significant I think that Mr. Donahue found the booklet in the material which Dr. Van de Water presented to the Committee. Had he not done so, Mr. Donahue would probably never have seen it.

I hope that, after considering the matter, you will find it in your heart to support Dr. Van de Water's confirmation.

Again, my thanks and best wishes to you.

Sincerely,

Roy M. Brewer

RMB:rm
Encl.

ORRIN G. HATCH, UTAH, CHAIRMAN
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United States Senate
COMMITTEE ON LABOR AND
HUMAN RESOURCES
WASHINGTON, D.C. 20510

October 5, 1981

Mr. John Van de Water
Chairman, National Labor Relations Board
1747 Pennsylvania Ave., N.W.
Washington, D.C. 20510

Dear Mr. Chairman:

During the recent confirmation hearing, the witnesses testifying for the AFL-CIO asked that two written documents be included in the record. One was entitled "You Are You" and the other, "The Union: How To Deal With The Union." I am writing to ask for some clarifying information in connection with the two documents.

First, in connection with "You Are You," I note that there is no reference to either yourself or your consulting firm. The AFL-CIO representatives suggested that this document was distributed during an organizational campaign in which you were involved as a consultant to management. I am wondering, in view of the absence of any reference to you in this document, whether you can identify it and whether you participated in any fashion in its preparation or distribution.

Secondly, the AFL-CIO representatives highlighted a statement in the second article to the effect that you had participated in 130 NLRB elections, of which the union lost in 125 of the cases. The Minority Members of the Committee seem to take some interest in this statement, although you noted in your testimony that you have never been found guilty of any unlawful conduct in connection with any union election. Despite this unblemished record, I anticipate that the Minority may want to pursue the details of these 130 elections. Therefore, I am wondering whether you can provide to the Committee any particulars or records which you may have in your files pertaining to these elections. I realize that this data may be quite ancient, and it would have been quite natural in the ordinary course of your business to dispose of any relevant records. In any event, it would be very much appreciated if you could clarify this matter.

Thank you for your cooperation.

Sincerely yours,

Orrin G. Hatch

Orrin G. Hatch
Chairman

OGH:sna

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

October 8, 1981

Honorable Orrin G. Hatch
Chairman, Committee on Labor
and Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Your letter dated October 5, 1981, requested clarifying information on two written documents submitted by AFL-CIO representatives at my recent confirmation hearing.

As to the first document entitled "You Are You" which was allegedly used by my consulting firm--that claim is totally false. I have examined the document in question and specifically deny preparing such document or authorizing its use in any election campaign. In fact, I have never before seen the document. Secondly, I have checked with Alloy Die Casting, the Company mentioned in the document, and they have confirmed that Van de Water Associates, Inc. was not involved and that the law firm of Hill, Farrer and Burrill of Los Angeles acted as their counsel in the union organizing campaign.

As to the second document entitled "The Union: How To Deal With The Union," this was an edited version of remarks I made in 1973 in an address to an industry group that was taped by Apparel Industry Magazine and prepared for circulation in that year by their editor. I have inquired and the original tape is no longer in existence. I did not see this document prior to its distribution nor did I authorize its circulation.

A question was raised about a paragraph in the second document referring to my "participation" in some 130 elections of which employees in 125 elections chose not to select the Union. I attempted to ascertain the names of the employers involved in such elections, but my records, unfortunately, do not go back that far. Despite my lack of records, I have made an effort to recall some employer names and have attached a list of such clients where I was involved during the period of union organizing. I am, however, unable to fix specific dates as to when I was retained by them, although they were probably before 1973.

Where I did speak to employees explaining the law and its ramifications, I invariably began with the caveat that I was not there to persuade them to accept or reject the union--that that was their decision after hearing the views of the union and the company--and that I was there to explain their rights and responsibilities under the law. In that respect, I would direct the Committee to an audio cassette previously furnished the Committee which includes a live

presentation to employees at Halliburton Services, Inc., Duncan, Oklahoma, where I gave my regular explanation of the law to nonsupervisory employees. I would also direct the Committee's attention to the four audio-visual cassette presentations furnished the Committee which I prepared at the request of Fisher Scientific Company in Pittsburgh, Pennsylvania. One of these was for supervisors that explains their duties to speak honestly and lawfully in full support of their employer--knowing that the union could present its views in favor of unionization and thereby give the employees the full facts and arguments on both sides before they made their final decisions. Another cassette clarifies the law and is for separate use with nonsupervisory employees.

I trust the above explanation clarifies my role with respect to the documents and their contents.

Sincerely,

John R. Van de Water

John R. Van de Water
Chairman

Enclosure

EMPLOYER CLIENTS INVOLVED IN UNION ELECTIONS

1. Halliburton Services, Inc., Duncan, Oklahoma
2. General Telephone Directory Co., Southern California
3. Bonus-Bilt Co., Glendale, California
4. Chromizing Corporation, Los Angeles, California
5. Leadtec Corporation, Southern California
6. Wayne Manufacturing Co., Pomona, California
7. Litton Industries, Inc., Beverly Hills, California
8. Disneyland, Anaheim, California
9. General Dynamics Corporation, San Diego, California
10. FMC Corporation, San Jose, California
11. Data Products Corporation, Woodland Hills, California

ORRIN G. HATCH, UTAH, CHAIRMAN
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JOHN P. EAST, N.C.

GEORGE W. PRITTS, JR., CHIEF COUNSEL
RENN M. PATCH, STAFF DIRECTOR AND GENERAL COUNSEL
LAWRENCE C. HOROWITZ, M.D., MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON LABOR AND HUMAN RESOURCES
WASHINGTON, D.C. 20510

November 12, 1981

The Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human Resources
Washington, D. C. 20510

Re: The Pending Nomination of John Van de Water to Serve as Chairman of the NLRB

Dear Mr. Chairman:

In support of the nomination of William Lubbers to be General Counsel of the National Labor Relations Board (NLRB), the former Chairman of this Committee, Senator Harrison Williams, stated in reference to a previous nominee for the post of General Counsel:

> "We looked at it this way: If the man has competence, integrity, and the ability that is needed in the job, let his nomination be confirmed." (Congressional Record, S.3829, 4/17/80).

If the members of this Committee base their votes on the criteria enunciated by Senator Williams, we are convinced that on November 19, 1981, the Committee will unanimously vote to recommend to the Senate that Mr. John Van de Water be confirmed as Chairman of the National Labor Relations Board.

Mr. Chairman, you have graciously afforded the Minority more than ample time to fully scrutinize Mr. Van de Water's professional activities. A chronology of significant events is listed below:

1. On June 18, 1981, the White House announced the President's intention to nominate Mr. Van de Water to serve as NLRB Chairman.

2. On July 24, 1981, Mr. Van de Water's nomination papers were officially received by the Senate.

3. Prior to the August recess, you granted a request made by the Minority through staff to postpone Mr. Van de Water's confirmation hearing until the conclusion of the recess. The request was accommodated to give the Minority every possible opportunity to investigate Mr. Van de Water's reputation and background.

4. A confirmation hearing scheduled for September 15, 1981, was postponed to accommodate Senator Kennedy, who desired to assist in his son's move to college on that date.

5. On September 30, 1981, over two months after the receipt of his nomination by the Senate, Mr. Van de Water's confirmation hearing was held by the Committee. On the Minority side only Senators Kennedy and Williams were in attendance.

6. On October 5, 1981, you transmitted a letter to Mr. Van de Water requesting his response to the objections raised by AFL-CIO Secretary-Treasurer, Thomas R. Donahue, during the hearing of September 30. Specifically, you requested that Mr. Van de Water provide some clarifying information concerning two documents presented to the Committee by Mr. Donahue and details concerning the union elections in which Mr. Van de Water had participated.

7. By letter transmitted to you and dated October 8, 1981, Mr. Van de Water fully responded to the objections outlined in your letter of October 5.

8. An Executive Session of the Committee was scheduled for October 28, 1981, for purposes of considering Mr. Van de Water's nomination.

9. On October 23, 1981, the Committee received a request from the Minority to postpone the Executive Session scheduled for October 28.

10. On October 26, 1981, you agreed to the Minority's request to postpone the Executive Session scheduled for October 28. The Committee was informed by the Minority through staff of their intention to submit additional questions to Mr. Van de Water.

11. On October 30, 1981, you transmitted a letter to the Minority in which time tables were established to expedite further deliberations on Mr. Van de Water's nomination. Specifically, any and all questions from the Minority were to be submitted in writing to Mr. Van de Water by November 5, 1981. All additional evidence was to be submitted for the record by November 12, 1981. Finally, an Executive Session to consider the nomination was scheduled for November 19, 1981.

Mr. Chairman, during the confirmation process, you have commendably extended every possible courtesy to enable the Minority to fully review the nominee's history. Through the confirmation process, it has been clearly established that Mr. Van de Water has extensive experience in labor-management relations. During his career, Mr. Van de Water has consistently maintained the highest of professional standards for competence and integrity. Those opposed to Mr. Van de Water have failed to produce a scintilla of evidence of impropriety or or unlawful conduct.

At the confirmation hearing of September 30, Mr. Van de Water was falsely accused of being responsible for the production of a document entitled "You Are You." This document was first made available to the Committee and Mr. Van de Water at the confirmation hearing and was in fact prepared for an election campaign which involved neither Mr. Van de Water personally or his company, Van de Water Associates, Inc. A second document, "The Union: How to Deal with the Union," was also presented to the Committee at the hearing. This document was an edited version of remarks made by Mr. Van de Water to an industry group in 1973. Mr. Van de Water neither reviewed or authorized the document prior to its publication. A complete reading of this document will reveal that even before an industry group, Mr. Van de Water's approach to labor relations is not anti-union, but instead pro-employee free choice.

Included among the comments attributed to Mr. Van de Water in "The Union: How to Deal with the Union," are:

> I don't mean this as an anti-union bust, nor do I advise illegal conduct, but rather on the basis of the freedom of your employees to choose for themselves whether they want to be unionized or not.
>
> And I am not here to suggest that anyone ought to violate the law or interfere with the rights of their employees to make a free choice. As a matter of fact, let me say this: I believe that there are labor unions in this country that have done a lot of good for this nation.
>
> There can be employers that want to keep wages depressed way below competition. And that's what a union is for - to try to get people in line with normal wage rates. There is nothing illegal about this, it is a perfectly proper function of the union.

It is not the policy of the National Labor Relations Act (NLRA) to impose a collective bargaining structure upon unwilling employees. Instead, the NLRA is designed to guarantee the right of employees to choose or to refrain from choosing union representation. Every piece of credible evidence presently before the Committee demonstrates Mr. Van de Water's commitment to this policy. Mr. Van de Water has consistently promoted, advocated, and defended the right of all employees to freely exercise individual choice. It is thus no wonder that Mr. Van de Water is strongly supported by union leaders with whom he has actually worked, including William C. Demers, Vice President, District 11, Communications Workers of America; Roy M. Brewer, Consultant to International Sound Technicians, Local 695, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (AFL-CIO); and Michael J. Riley, President, Joint Council of Teamsters No. 42.

Additional questions might be raised by the Minority concerning Mr. Van de Water's role as a management attorney in union elections. However, by his letter of October 8, 1981, Mr. Van de Water has already transmitted to the Committee all of the information within his knowledge and possession concerning his involvement in union elections. That an attorney fails to retain case

files from cases ten to twenty years in the past is surely not unusual or suspicious. However, it is significant to re-emphasize that not once has Mr. Van de Water been found guilty of any professional impropriety. This is of particular note within the context of his involvement in union organizing campaigns.

The substance of the opposition to Mr. Van de Water's nomination boils down to his successful career as a management attorney. That the Committee would reject any Presidential nominee based upon his experience and competence in the field related to his nomination is truly extraordinary. Members of the NLRB have long been criticized by both labor and management practitioners for their lack of real-world experience. The NLRB is theoretically the government's agency with special expertise in labor relations. Unfortunately, labor policy in the past has been too often made in an academic vacuum by those who lack first-hand knowledge of how our labor laws actually impact upon employees and employers. In contrast to all the the current Board Members, Mr. Van de Water has actually represented private parties on the firing line. He will bring to the Board not only real expertise, but also a much needed perspective and balance.

Under your fair and judicious leadership, Mr. Chairman, the Committee has exhausted all potential review of Mr. Van de Water's career and personal qualifications. Like Senator Williams, we agree that if the man has competence, integrity, and the ability that is needed, his nomination should be confirmed. We urge you to proceed forthwith to the Executive Session scheduled for November 19, 1981. We look forward to joining with you in recommending to the Senate that it confirm President Reagan's nomination of John Van de Water as Chairman of the NLRB.

Sincerely,

John P. East
John P. East
U.S. Senator

Don Nickles
Don Nickles
U.S. Senator

Jeremiah Denton
Jeremiah Denton
U.S. Senator

Dan Quayle
Dan Quayle
U.S. Senator

Paula Hawkins
Paula Hawkins
U.S. Senator

Gordon J. Humphrey
Gordon J. Humphrey
U.S. Senator

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

November 17, 1981

Honorable Orrin G. Hatch
Chairman, Committee on Labor
and Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to the letter dated November 12, 1981, from Thomas R. Donahue, Secretary-Treasurer, AFL-CIO. The principal thrust of Mr. Donahue's letter is his allegation that because I made a speech to employees in a case entitled Bell Helmets, Inc., NLRB Case No. 21-RC-14829, I was a "persuader" and should have filed a disclosure statement under the provisions of Section 203 of the Labor-Management Reporting and Disclosure Act and that, therefore, the matter should now be referred to the U.S. Department of Labor for investigation. I categorically deny that I was a "persuader" and, for reasons detailed hereafter, there is no basis for referral of this matter to the Department of Labor.

In all candor, I must suggest that Mr. Donahue's actions and comments in this confirmation proceeding have seriously undermined his credibility. I presume that the Committee Members are aware of the following:

(1) At my confirmation hearing, Mr. Donahue submitted two documents which he attributed to me. One document entitled "You Are You," which was allegedly used by my consulting firm, was not in fact ever seen by me--it was not written by me--it was not utilized by me or my firm. A superficial investigation by Mr. Donahue or his representative would have disclosed that I was in no way involved. It would appear that the Committee is ill-served by the submission of false or irrelevant documents.

(2) At my confirmatin hearing, in response to a question by Senator Williams, Mr. Donahue stated in essence that if I had been engaged in labor relations matters as a management representative in the last decade, I should be disqualified from consideration, and, conversely, if I had not been so engaged, I was unqualified. It is my view that Mr. Donahue's opposition to me, reflecting that of the AFL-CIO, would continue whatever my qualifications and without regard to such matters as integrity or objectivity. I was not Mr. Donahue's candidate to be a Member of the National Labor Relations Board. He doesn't like that. I would only note that this Committee and the Senate have seen fit to confirm the nominations of other management representatives, e.g., Edward B. Miller in 1970 and Betty Southard Murphy in 1975, who served terms as Chairman (or Chairperson) in distinguished fashion.

Mr. Donahue contends that I "abused" the labor law and further violated the spirit and letter of the law by instructing management on how to encourage employees to seek decertification, citing an article (in fact an edited version of remarks I made in 1973) entitled "The Union: How To Deal With The Union." He conveniently ignores portions of the article in which I warn employers not to engage in threats, interrogation, promises of benefits, or spying on employees; or where I urge employers to "build a relationship with your employees that calls for responsible unionism"; or where I state I am not suggesting that "anyone ought to violate the law or interfere with the rights of their employees to make a free choice." I simply suggest that you and members of the Committee read the article and make your own assessment.

At page two of his letter, Mr. Donahue questions my good faith in providing the Committee with requested information because the AFL-CIO discovered a case from December 1976 (the Bell Helmets case) which was not cited by me in fulfilling your request for additional information. In your letter to me dated October 5, 1981, you asked for clarifying information in connection with two documents submitted by the AFL-CIO at my confirmation hearing. In the final paragraph you stated:

> Secondly, the AFL-CIO representatives highlighted a statement in the second article to the effect that you had participated in 130 NLRB elections, of which the union lost in 125 of the cases. The Minority Members of the Committee seem to take some interest in this statement, although you noted in your testimony that you have never been found guilty of any unlawful conduct in connection with any union election. Despite this unblemished record, I anticipate that the Minority may want to pursue the details of these 130 elections. Therefore, I am wondering whether you can provide to the Committee any particulars or records which you may have in your files pertaining to these elections. I realize that this data may be quite ancient, and it would have been quite natural in the ordinary course of your business to dispose of any relevant records. In any event, it would be very much appreciated if you could clarify this matter.

As my letter dated October 8, 1981 noted, the article in question was an edited version of remarks I made in 1973 and, accordingly, the elections referred to therein occurred prior to that time. Noting that I retained no records that far back, I attempted to recall from memory the names of employers with whom I have been involved in elections which occurred at least 8 to 15 years before. I fully responded to your October 5 request to the extent I was able, despite the absence of records.

The remainder of Mr. Donahue's letter is devoted to the contention that I have engaged in persuader activity and have not registered pursuant to Section 203 of the Labor-Management Reporting and Disclosure Act. In support of such argument, he cites one case in which I participated, Bell Helmets, Inc., NLRB Case No. 21-RC-14829.

I would first note that the objections to the election that were filed by the Union (an AFL-CIO affiliate), which enumerated eight items of alleged conduct by me, were overruled by the Regional Director. No exceptions to the Regional Director's Report on Objections were filed by the Union, and the Report was adopted by the Board.

Secondly, the Regional Director's Report was an ex parte investigation including interviews of employees. I was never asked to confirm or dispute the allegations in question because the Regional Director found no validity to the objections.

My recollection of the case is that my speech followed my standard presentation. I routinely began each presentation as follows:

> Now, I want to be very clear with you fellows, that I am not here, at the request of the company, in any way, directly or indirectly, to influence anyone on how to vote or whether to vote in a union campaign. Rather, my job is simply to clarify the law, so that you're free, then--thinking through what your stand, as you feel it should be, ought to be--and then moving ahead as you see fit in taking any stand you want to, or not taking a stand, just as you choose.

This very same passage is quoted at page sixteen in a pamphlet entitled Management Strategy in Response to Union Organizing Campaigns, an audio cassette of which has been furnished to the Committee.

I would remind the Committee that at my confirmation hearing, I stated that I made speeches to employees. In fact, I furnished the Committee with two sets of audio visual cassettes and, also, an audio cassette (noted above) that objectively states my views on the law to the employees. Despite the cassettes, pamphlets, and law journal articles furnished the Committee setting forth how I gave speeches to employees over the years, Mr. Donahue, citing only Bell Helmets, argues that the matter should be referred to the Department of Labor on the possible ground that I acted as a persuader.

Merely giving a speech to employees during a union organizing campaign is not reportable persuader activity. This is apparent from a plain reading of the statute, 29 U.S.C. §433(b)(1), and the applicable case law. Cf. Wirtz v. Fowler, 372 F.2d 315, 318 fn. 2, (5th Cir. 1966); Id., p. 324. Filing requirements apply only if an employer and consultant enter into an agreement to directly or indirectly persuade employees not to join a union. Id., p. 324. See also, Wirtz v. National Welders Supply Company, 254 F. Supp. 62, 65 (W.D.N.C. 1966). Neither the employer nor an attorney need file with the Department of Labor when the attorney is retained by the employer to speak to groups of employees regarding their statutory rights and the rights of both labor and management. See, Carver, "The Application of the LMRDA 'Labor Consultant' Reporting Requirements to Management Attorneys: Benign Neglect Personified," 73 NW. U. L. Rev. 605, 622 (1978).

The salient examples of persuader conduct are cited by the Fifth Circuit. These activities are clearly distinguishable from my presentations. Specifically:

(1) The attorneys in Wirtz v. Fowler openly admitted that the talks given by their associates were "designed and intended to influence and persuade such employees against voting in favor of the Union." Id., p. 320 fn. 7.

(2) Employees at Plant City were told by the company's attorney that they could lose jobs over trying to organize the union. Id., p. 321.

(3) Also at Plant City, the attorney discussed the cost of union dues and said that the employees might not gain anything from joining a union. Id., p. 321.

(4) The attorney at Speed Sprayer stated "that the union was out after the employees' money." Id., p. 322.

(5) The attorney at Speed Sprayer made uninvited visits to the homes of employees to discuss the employees' position on the union. Id., p. 322.

(6) Attorneys retained by Guild Industries conducted interrogations recorded by court reporters in an attempt to ascertain the viewpoints by individual employees following the filing of a petition for election. Id., p. 322-323.

The record before the Committee is devoid of any finding of fact that my conduct has ever approached the persuader activities of the attorneys in Wirtz v. Fowler.

The letter dated April 20, 1981, from John LeMay, Area Administrator for the Department of Labor, informs Attorney Wesley Wilson that he should file disclosure reports since during an organizing campaign Wilson discussed the effect of the union on wages and benefits. In my presentations, I have never discussed comparison of wages and benefits.

I have never filed reports under 29 U.S.C. §203(b) due to my belief that I have not engaged in "persuader activities." In support of my conclusion, I have never received a demand for compliance letter similar to the letter from Area Administrator John LeMay to Wesley Wilson. Nor have any complaints been filed against me with the Department of Labor by employees whom I have addressed. The complete absence of any complaints during my many years as a labor-management consultant is proof of the neutral, even-handed nature of my presentations.

The Regional Director's Report in Bell Helmets is a thin reed upon which Mr. Donahue has based his accusations. His specious claim that I have failed to comply with federal reporting requirements is not supported by existing law nor evidence and comes after all interested parties have had over five months to fully scrutinize my professional activities. Under the

circumstances, I believe that it is totally unfounded for the Committee to request a Department of Labor investigation. One with a dispassionate perspective might suggest that Mr. Donahue is clutching at straws, seeking to unduly delay the Committee's consideration of my nomination.

Thank you for the opportunity to respond.

Sincerely,

John R. Van de Water
Chairman

The CHAIRMAN. With that, we will adjourn the committee hearing and proceed later with the Van de Water nomination at an executive session.

Thank you.

[Whereupon, at 4:50 p.m., the committee recessed, to reconvene subject to call of the Chair.]